1391.

SUPREME COURT OF THE UNITED STATES.

No. 151.

THE CITY OF BOSTON, PLAINTIFF IN ERROR,

vs.

DAVID R. LECRAW.

IN ERROR TO THE CIRCUIT COURT UNITED STATES, FOR THE DISTRICT OF RHODE ISLAND.

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At a circuit court of the United States, holden at Newport, within and for the Rhode Island district, on the fifteenth day of June, A. D. one thousand eight hundred and fifty-three:

Present the honorable Benjamin R. Curtis, associate justice Sup. Court U. S.; the honorable John Pitman, U. S. dist. judge for R. I. dist.; George W. Browne, esquire, U. S. dist. att'y for R. I. dist.; Francis C. Gardiner, esquire, U. S. marshal; John T. Pitman, clerk of circuit court.

In the record of the proceedings of the said court, among others are the following, to wit:

DAVID R. LECRAW
v.
CITY OF BOSTON.

Be it remembered, that at the November term, 1852, was filed the following transcript from the Mass. dist.:

UNITED STATES OF AMERICA,
Massachusetts district, 1852.

October term.—At a circuit court of the United States, for the first circuit and district of Massachusetts, begun and holden at Boston, on Friday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-three, before the honorable Benjamin R. Curtis, associate justice; honorable Peleg Sprague, district judge:

DAVID R. LECRAW, of Nashville, in the State of New Hampshire, a citizen of the State of New Hampshire, plaintiff,
vs.
THE CITY OF BOSTON, a corporation established by law in the district of Massachusetts, defendant.

In a plea of trespass on the case, for that on the first day of July, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life but since deceased, were copartners under the firm and style of Lecraw and Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon and as partners, were possessed as a portion of their partnership property of and in a certain wharf estate, with the appurtenances, situated in said Boston, and known as the "Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf which was occupied by one Herrick, as their tenant, and the easterly end of said wharf lying beyond said building, which was occu-

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pied by Sprague & Soule, as tenants at will of the said Lecraw & Perkins. And the plaintiff says, that by reason of the premises, the said Lecraw and Perkins ought to have had the free and uninterrupted use of the long dock lying south of said wharf, for the purpose of access to said wharf, and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf. Yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw and Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their agents prevented said Lecraw and Perkins from using the same, and drove piles and placed a drain along said dock, and so near to said Bull wharf that the said Lecraw & Perkins were deprived of the use of said dock, and could not have access by said dock to their wharf for the purpose of lading and unlading their vessels, as they before had been accustomed, and still of right should have been allowed to do. And the plaintiff says, that the said defendants kept and continued said poles and drain in said dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one. And the plaintiff says, that by reason of said disturbance of and interference with the use of said dock, the said Lecraw and Perkins, and the said plaintiff since the decease of said Perkins, lost a large sum of money, to wit: the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf; and that the said plaintiff, and the said Lecraw and Perkins, have been compelled to expend, and have expended, the sum of two thousand dollars for labor and for building bridges for the purpose of unlading vessels and moving coal upon said wharf, which it would not have been necessary to expend but for said obstructions. And that the said plaintiff and the said Lecraw and Perkins have been compelled to hire, and have hired, other dock privileges for the necessary business of said wharf, and have incurred therefor during said period of continuing said obstruction a large expense, to wit: the expense of four thousand dollars. And the said plaintiff has lost, and the said Lecraw & Perkins have lost, by reason of said obstruction, and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf. And the plaintiff says, that on the nineteenth day of November, in the year eighteen hundred and forty-nine, the said Perkins died, and he, the said plaintiff, is the sole surviving partner of said firm.

Also for that on the first day of July, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life but since deceased, were copartners under the firm and style of Lecraw and Perkins, in the business of wood and coal merchants, and carried on said business at the wharf hereinafter described; and the plaintiff says, that as such partners they were in possession of a certain wharf estate, with the appurtenances, situate in said Boston, and known as

the "Bull wharf," excepting the attic of the long building on said wharf. And the plaintiff says, that by reason of the premises, the said Lecraw & Perkins ought of right to have uninterrupted use of the long dock lying south of said wharf, for the purpose of access to said wharf, and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf; and the plaintiff says that right did belong and appertain to said wharf; yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their servants prevented the said Lecraw and Perkins from using the same, and drove piles and placed a drain along said dock, and so near to said Bull wharf that the said Lecraw & Perkins were deprived of the use of said dock, and could not have access to their wharf by said dock for the purpose of lading and unlading their vessels in so free a manner as they before had been accustomed, and still of right should have been allowed to do. And the plaintiff says, that the said defendants continued and kept said piles and drain in said dock from that time until the nineteenth day of November, in the year of our Lord eighteen hundred and forty nine.

And the plaintiff says, that by reason of the aforesaid interruption of, and interference with the use of said dock, the said Lecraw and Perkins were greatly injured in their business, and lost profits of business which they otherwise would have received, and were obliged to employ many additional servants and agents, and were obliged to build bridges for the use of their wharf at a large expense, and were also obliged to hire, at a large expense, additional dock privileges; and the plaintiff says that on the nineteenth day of November aforesaid, the said Perkins died, and the said plaintiff is the sole surviving partner of said firm of Lecraw and Perkins.

Also for that the said Lecraw, on the twentieth day of November, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and coal merchant, and was in possession of a certain wharf estate with the appurtenances, situated in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf.

And the plaintiff says, that by reason of the premises he ought of right to have had the free and uninterrupted use of the long dock lying south of said wharf, for the purpose of access to said wharf, and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf; and the plaintiff says that right did belong to said Bull wharf and was appurtenant thereto; yet the defendants, well knowing the premises, but contriving and intending to injure the plaintiff, entered into and upon said dock, and without right, drove piles, and placed a drain along the same, so near to said Bull wharf, that the plaintiff was deprived of the use of said dock, and could not have access to his said wharf, with the vessels which he used in and about his business for the purpose of unlading the same, in so free and unin-

turbed a manner as he had before been accustomed to do, and of right still ought to have been allowed to do. And the plaintiff says, the said defendants continued and kept said piles and drain in said dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one, and during all that time deprived him of his rights to the use of said wharf.

And the plaintiff says, that by reason of the aforesaid interruption of, and interference with the use of said dock, he has been greatly injured in his aforesaid business, and lost profits of his business, which he otherwise would have received, and has been obliged to pay, and has paid large sums of money, for hiring additional servants and agents in his business, and has been compelled necessarily to pay, and has paid, large sums of money for the use of other dock privileges, in order to carry on his business aforesaid, and has incurred large expenses in and about his business, which he otherwise would not have been compelled to do:

To the damage of the said plaintiff, as he says, the sum of ten thousand dollars.

Whereupon the marshal made his return, as follows, viz:

UNITED STATES OF AMERICA,
Massachusetts district, ss.

BOSTON, *September* 13, 1852.

Pursuant hereunto, I have summoned the City of Boston, within named, by giving in hand to Hon. Benjamin Seaver, the mayor of said city, and also to S. F. McCleary, jr., esq., the clerk of said city, respectively, a true and attested copy hereof, for the appearance of said city in court, in this action.

J. H. RILEY, *Deputy U. S. marshal.*

2 serv. p. - -	$4 05
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	$8 05

This action was entered at this present term, when the parties appeared by their respective attorneys. And on the fourth day of April, A. D. 1853, the following plea of general issue was filed, viz:

CIRCUIT COURT UNITED STATES,
Massachusetts district, ss.

October term, 1852.

DAVID R. LECRAW
vs.
CITY OF BOSTON.

And now the said defendant comes, &c., when, &c., and for plea says, that it is not guilty of the grievances laid to its charge, in manner

and form as the plaintiff hath thereof complained against it, and of this puts itself upon the country.

By its attorney: P. W. CHANDLER.

And the plaintiff doth the like.

By his attorney: H. F. DURANT.

And afterwards, on said fourth day of April, A. D. 1853, the following motion for removal of said suit, &c., was filed, viz:

CIRCUIT COURT OF THE UNITED STATES,
First circuit, aistrict of Massachusetts.

October term, 1852.

DAVID R. LECRAW
vs.
CITY OF BOSTON.

And now the defendant comes into court and respectfully represents, that the above entitled action is a suit brought by the plaintiff, alleging himself to be a citizen of the State of New Hampshire, against the City of Boston, a corporation established, and whose citizens reside within the said district of Massachusetts, for the recovery of damages for an alleged nuisance or encroachment upon certain rights of way or easements claimed by the plaintiff to be appurtenant to certain wharves and tenements of which he declares himself to be the owner, and which damages are laid in his writ and declaration at the sum of ten thousand dollars; that these defendants, denying that the plaintiff has any such right of way or easements, appurtenant to any such wharves or tenements, as in his said declaration alleged, have pleaded that they are not guilty, and that the case now stands for trial by the jury.

That by the laws of this Commonwealth of Massachusetts, all the citizens or inhabitants of any city or town within the same, and all their estates, real and personal, are liable to be taken on execution for the payment of any debt due from such city or town to the plaintiff in such execution, and the said citizens or inhabitants are liable to be taxed and assessed in order to raise the means of paying and discharging said debts; and that the damages, if any shall be recovered by the plaintiff in this suit, must be paid out of moneys to be raised by levy of an execution to be issued therein upon the estates of the said city, or of some one or more of the inhabitants thereof, or by moneys to be assessed upon them, so that every inhabitant or citizen of said city of Boston, liable to taxation, is directly interested in the result of said suit.

That the honorable the associate judge of the Supreme Court of the United States for this circuit is incompetent to sit in the trial of said suit, by reason of having heretofore been of counsel in a case now pending in regard to the same cause of action, and that the honorable the judge of the district court is an inhabitant and citizen of said city of Boston, paying taxes therein, and the amount of whose taxes

must be, to a greater or less degree, dependent upon the judgment that shall be finally rendered therein, and so is directly interested in the result thereof.

Wherefore the defendants humbly pray that process may issue for the removal of the said suit to some neighboring circuit of the Supreme Court of the United States for the trial thereof, pursuant to the statute in such case made and provided.

P. W. CHANDLER,
Of counsel for the defendant.

Thereupon the following order was made by the court, as follows, viz:

UNITED STATES OF AMERICA.

Circuit court of the United States, district of Massachusetts, October term, 1852.

DAVID R. LECRAW
vs.
CITY OF BOSTON.

It having appeared that the honorable Benjamin R. Curtis, one of the associate justices of the Supreme Court of the United States, who is assigned to this circuit, is so connected with the said plaintiff as to render it, in his opinion, improper for him to sit in the trial of this suit; and also, that the honorable Peleg Sprague, district judge of the United States for this district, is an inhabitant of the said city of Boston, and concerned in interest in this cause, so as to render it, in his opinion, improper for him to sit in the trial thereof: It is therefore ordered by the court (both judges concurring) that the clerk do enter these facts on the record of the court.

And it is further ordered,

That an authenticated copy of the record, and all proceedings in the suit, be forthwith certified to the circuit court of the United States, within and for the district of Rhode Island, the same being the most convenient circuit court in the next adjacent State.

By the court: H. W. FULLER, *Clerk*.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

I, Henry W. Fuller, clerk of the circuit court of the United States, for the first circuit, Massachusetts district, do hereby certify, that the foregoing is a true copy of the record of the case of David R. Lecraw vs. The City of Boston.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court at Boston, this twenty-first [L. S.] day of April, A. D. 1853, and in the seventy-seventh year of the independence of the United States of America.

H. W. FULLER, *Clerk*.

And the case being continued to the present term, the plaintiff moves to file additional counts, to wit:

United States circuit court, June T., 1853.

DAVID R. LECRAW
vs.
THE CITY OF BOSTON.

And now the plaintiff moves this honorable court for leave to file the following additional counts to his declaration in the above entitled cause.

By his attorney: HENRY F. DURANT.

Also for that on the first day of July, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life but since deceased, were copartners under the firm and style of Lecraw & Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon, and as a portion of their partnership were in possession of, a certain wharf estate, with the appurtenances, situated in Boston aforesaid, on Broad street so called, and being the wharf estate known as and called the "Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf, which was occupied by one Herrick as their tenant, and the easterly end of said wharf, lying beyond said building, which was occupied by Sprague & Soule as tenants at will of said Lecraw & Perkins; and the plaintiff says that by reason of the premises, the said Lecraw & Perkins ought to have had the free and uninterrupted use of the long dock lying south of said wharf, for the purpose of access to said wharf from the sea with vessels, and of passing to and from the sea with vessels, and of lading and unlading vessels at said wharf, and of laying vessels on flats in said dock as belonging and appertaining to said Bull wharf; yet the said defendant well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their agents and servants prevented the said Lecraw & Perkins from using the same and from using their wharf, and drove piles into said dock, and placed a drain constructed of plank and timbers along said dock and so near to said Bull wharf that the said Lecraw & Perkins were thereby deprived of the use of said dock, and could not have access by said dock to their wharf for the purpose of lading and unlading their vessels, or of laying vessels on the flats in the same, as they before had been accustomed and still of right should have been allowed to do; and the plaintiff says that the said defendants kept and continued said piles and drain in said dock from that time until the nineteenth day of November, in the year eighteen hundred and forty-nine, and that by reason of said disturbance of and interference with the use of said dock, the said Le-

craw & Perkins lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which they were obliged to abate and deduct from the rent of their tenants, to prevent them from leaving the premises; and that the said Lecraw and Perkins have been compelled to expend and have expended the sum of three thousand dollars for labor and for building bridges, and for unlading vessels, and for moving coal upon said wharf, which it would not have been necessary to expend but for the obstruction and grievance aforesaid; and the said Lecraw & Perkins have been compelled to hire, and have hired other dock privileges for the necessary business of said wharf, and have incurred therefore during said period of continuing said obstruction a large expense, to wit, the expense of four thousand dollars, and have been compelled to pay higher prices for wood and for coal than they would otherwise have been compelled to pay, and have lost, by reason of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on their business aforesaid, and by the use and rent of said wharf, for wharfage and wharf privileges.

And the plaintiff says, that on the nineteenth day of November, eighteen hundred and forty-nine, the said Perkins died, and the said plaintiff is the sole surviving partner of said firm of Lecraw & Perkins.

Also for that the said plaintiff, on the twentieth day of November, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and coal merchant, and was in possession of a certain wharf estate, with the appurtenances, situated on Broad street so called in said Boston, and being the wharf estate called and known as "the Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf, which was occupied by one Herrick as his tenant, and the easterly end of said wharf beyond said building, which was occupied by Sprague & Soule as his tenants. And the plaintiff says, that by reason of the premises, he, the said Lecraw, ought to have had the free and uninterrupted use of the long dock, lying south of said wharf, for the purpose of access to said wharf from the sea with vessels, and of passing to and from the sea with vessels, and of lading and unlading vessels at said wharf, and of laying vessels on the flats in said dock, as belonging and appertaining to said Bull wharf; yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the plaintiffs in that behalf, on the twentieth day of November aforesaid, wrongfully entered into and upon said dock, and by their agents and servants prevented the plaintiff from using the same, and from using his wharf, and drove piles into said dock and placed a drain, constructed of planks and timbers, along the dock aforesaid, and so near to said Bull wharf that the said plaintiff was thereby deprived of the use of said dock, and could not have access through said dock to his wharf, for the purpose of lading and unlading vessels, or of lay-

ing vessels on the flats in the same, as he before had been accustomed, and still of right ought to have been allowed to do; and the plaintiff says, that the said defendants kept and continued said piles and drain in said dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one, and that by reason of said disturbance of, and interference with, the use of said dock, the said plaintiff lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which he was obliged to deduct and abate from the rent of his tenants to prevent them from leaving the premises; and that he has been compelled to expend and has expended the sum of three thousand dollars for labor and for building bridges, and for unlading vessels, and for moving coal upon said wharf, which it would not have been necessary to expend but for the obstruction and grievance aforesaid; and the said plaintiff has been compelled to hire, and has hired other dock privileges for the necessary business of said wharf, and has incurred therefor, during said period of continuing said obstruction, a large expense, to wit, the expense of four thousand dollars, and has been compelled to pay higher prices for his wood, and for his coal, than he would otherwise have been compelled to pay, and has lost, by reason of such obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which he would otherwise have received from the profits of his business aforesaid, and for the use and rent of said wharf, for wharfage and wharf privileges, and has been otherwise greatly injured in his property and business.

And also for that on the first day of July, in the year 1849, at Boston aforesaid, in the district of Massachusetts aforesaid, the plaintiff and one William B. Perkins, since deceased, were copartners under the firm of Lecraw & Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon, and as partners were in possession as a portion of their partnership property of, a certain wharf estate, with the appurtenances, situated in said Boston, known as the Bull wharf, excepting the attic of the long building on said wharf and a building at the easterly end of said wharf, which was occupied by one Herrick as their tenant; and the easterly end of said wharf lying beyond said building which was occupied by Sprague & Soule, as tenants at will of the said Lecraw & Perkins, which said Bull wharf is bounded as follows, namely: westerly or northwesterly, in Broad street, there measuring sixty-two feet and three inches or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on the commissioners' line so called in Boston harbor, there measuring fifty-two feet or thereabouts; southerly or southwesterly, partly on the town way or dock, there measuring six hundred and sixty feet, more or less. And the plaintiff asserts, that said dock forming the southerly boundary of the estate so by him and the said Perkins, deceased, possessed, and extending between said Bull wharf and Summer street wharf so called, was

at the time of the grievances hereinafter mentioned, and for a long time prior thereto had been, part of the harbor of Boston, and a public dock, slip or way, navigable by vessels and over which the waters of the sea ebbed and flowed; and by reason thereof, the said Lecraw & Perkins ought to have had, and still of right ought to have been allowed to pass and repass as over a navigable highway with boats and vessels of every description, upon, over and through said dock from the wharf so by them possessed as aforesaid to the channel of the sea; and from said channel of the sea to the said wharf by them possessed, and to use said dock for all purposes of navigation. Yet the defendant, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully and injuriously placed and erected divers large quantities of wood and timber in and across the said way or dock, to wit, by driving piles therein and placed a drain along the same, and kept and continued said piles and drain in said way or dock from that time until the 19th day of November, in the year of our Lord one thousand eight hundred and forty-nine, during all of which time the said way or dock was, and is still, greatly obstructed and stopped up, and by means thereof the said Lecraw & Perkins could not pass or repass with their vessels from the sea to their wharf during the time aforesaid, or any part thereof, till the time of the said Perkins' decease hereinafter mentioned; nor have or enjoy said dock or way as they, the said Lecraw & Perkins, ought to have done and otherwise might and would have done; and the said Lecraw & Perkins have been and are deprived of the use, benefit and advantage thereof, as and for a navigable highway or as a dock; and the plaintiff says, that by reason of said disturbance of and interference with the use of said dock or way, the said Lecraw & Perkins lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which they were obliged to abate from their tenants' rent to prevent their leaving the premises; and that the said Lecraw & Perkins have been compelled to expend, and have expended the sum of two thousand dollars for labor and for building bridges for the purpose of unlading vessels and moving coal upon said Bull wharf, which it would not have been necessary to expend but for said obstruction. And that the said Lecraw & Perkins have been compelled to hire, and have hired, other dock privileges for the necessary business of said wharf by them possessed, and have incurred therefor during said period of continuing said obstruction a large expense, to wit, the expense of four thousand dollars, and have been compelled to pay higher prices for wood and coal; and the said Lecraw & Perkins have lost, by reason of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf, and by the use and rent of said wharf for wharfage.

And the plaintiff says, that on the nineteenth day of November, in

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the year eighteen hundred and forty-nine, the said Perkins died, and he, the said plaintiff, is the sole surviving partner of said firm of Lecraw & Perkins.

Also for that the said Lecraw, on the 20th day of November, eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and coal merchant, and was in possession of a certain wharf estate, with the appurtenances, situated in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf which was occupied by one Herrick as his tenant; and the easterly end of said wharf beyond said building which was occupied by Sprague and Soule as his tenants at will, which said Bull wharf is bounded as follows, viz: westerly or northwesterly on Broad street, there measuring sixty two feet and three inches or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on the commissioners' line so called in Boston harbor, there measuring fifty-two feet or thereabouts; southerly or southwesterly, partly on the town way or dock, there measuring six hundred and sixty feet, more or less. And the plaintiff avers that said dock, forming the southerly boundary of the estate so by him possessed, and extending between said Bull wharf and Summer street wharf so called, was at the time of the grievance hereinafter mentioned, and for a long time prior thereto had been, part of the harbor of Boston and a public dock, slip or way, navigable by vessels, and over which the waters of the sea ebbed and flowed, and by reason thereof the said Lecraw ought to have had, and still of right ought to have been allowed to pass and repass as over a navigable highway with boats of every description upon, over and through said dock from the wharf so by him possessed as aforesaid, to the channel of the sea, from the channel of the sea to the said wharf by him possessed, and to use said dock for all purposes of navigation.

That the defendant, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw and Perkins in that behalf, on the second day of July aforesaid, wrongfully and injuriously placed and erected divers large quantities of wood and timber in and across the said way or dock, to wit, by driving piles therein, and placed a drain along the same; and kept and continued said piles and drain, in said way or dock, from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one; during all of which time the said way or dock was, and is still, greatly obstructed and stopped up, and by means thereof the said Lecraw could not pass or repass with his vessels from the sea to his wharf, during the time aforesaid, or any part thereof; nor have or enjoy said dock or way as he, the said Lecraw, ought to have done, and otherwise might and would have done; and the said Lecraw has been, and is, deprived of the use, benefit, and advantage thereof, as and for a navigable highway, or as a dock. And the said Lecraw says, that by reason of said disturbance of, and interference with, the use of said dock or way, he, the said

Lecraw, lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which he was obliged to abate from his tenants' rent to prevent their leaving the premises. And that the said Lecraw has been compelled to expend, and has expended, the sum of two thousand dollars for labor, and for building bridges, for the purpose of unlading vessels, and moving coal, upon said Bull wharf, which it would not have been necessary to expend but for said obstruction. And that the said Lecraw has been compelled to hire, and has hired, other dock privileges for the necessary business of said wharf by him possessed, and has incurred therefor, during said period of continuing said obstruction, a large expense, to wit, the expense of four thousand dollars; and has been compelled to pay higher prices for wood and coal. And the said Lecraw has lost, by reason of said obstruction, and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf, and by the use and rent of said wharf for wharfage.

And by leave the plaintiff made the following amendment to his writ:

The plaintiff amends his writ in this case by inserting after the words "the City of Boston, a corporation established by law in the district of Massachusetts," the following words in addition: "All the members of which corporation are citizens of the State of Massachusetts."

By his attorney,

H. F. DURANT.

And the case is committed to the following jury:

William Pinegar, foreman,	Stillman Welsh,
Seth C. Bradford,	James Burlinghame,
John T. Tilley,	Jeremiah B. Hazard,
John Hambly,	James Lewis,
James O. Sweet,	Jesse B. Crandall,
George C. Browning,	George W. Barney.

Who come into court and returned a sealed verdict, which is duly affirmed in the words following, to wit: "The jury find that the said defendants are guilty in manner and form as the plaintiff has alleged in the sixth and seventh counts in his declaration, and they assess the damages in the sum of nine thousand two hundred and eighty dollars; of which sum thirteen hundred and twenty-five dollars are assessed as the damages for injury alleged in the sixth count, and seven thousand nine hundred and fifty-five dollars are assessed as the damages for injury alleged on the seventh count.

WILLIAM PINEGAR, *Foreman.*

Whereupon it is considered by the court here, that the plaintiff have and recover of the defendants the sum of nine thousand two hundred and eighty dollars debt, and costs of suit taxed at , amounting in all to the sum of dollars cents.

RHODE ISLAND DISTRICT, ss.

CLERK'S OFFICE. CIRCUIT COURT,
At Providence, December 7th, A. D. 1853.

I, John T. Pitman, clerk of said circuit court for said district, do hereby certify that the foregoing twenty-five pages contain a true transcript from the record of the case David R. Lecraw vs. The City of Boston, disposed of at the June term, A. D. 1853; and also of the petition for writ of error, and the bond for costs entered therein, hereto annexed. Duly examined and compared.

In testimony whereof I have hereunto set my hand and seal of said circuit court, on the day and year above written.

[SEAL.]

JOHN T. PITMAN, *Clerk.*

Whereupon the defendants filed the following the petition:

RHODE ISLAND DISTRICT, *sc.*

Circuit court of the United States.

In the case

DAVID R. LECRAW
vs.
CITY OF BOSTON.

To the honorable John Pitman, judge of the United States for said Rhode Island district.

The said City of Boston respectfully represents: That at the present June term, 1853, of said court, judgment was rendered against it in favor of the plaintiff in said cause, upon the verdict of the jury thereon. That the said defendant excepted to the charge of the court to the jury, and their ruling of the law in said case, as fully appears in the bill of exceptions filed in said case.

Whereupon said defendant prays that a writ of error may be allowed in said cause, returnable to the next December term of the Supreme Court of the United States, to be holden at Washington.

CITY OF BOSTON,
By SAM. AMES, *their att'y.*

August 8th, 1853.

Let a writ of error issue.

JOHN PITMAN,
District judge U. S. R. I. dist.

And the following bond was filed:

Circuit court of the United States, for the first circuit, and for the district of Rhode Island.

DAVID R. LECRAW
vs.
CITY OF BOSTON.
In error.

Know all men by these presents, that the City of Boston and its

successors, as principal, and we, Jacob Sleeper and Sampson Reed, both of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, our heirs, executors, and administrators, as sureties, are held and firmly bound unto the above named David R. Lecraw in the sum of fifteen thousand dollars, to be paid to the said David R. Lecraw, his executors or administrators; to which payment well and truly to be made, the said City of Boston binds itself and its successors, jointly and severally with said sureties, their heirs, executors, and administrators; and we, the said sureties, bind ourselves, each of us, jointly and severally, and our and each of our heirs, executors, and administrators.

In witness whereof the said City of Boston has caused its corporate seal to be hereunto affixed, and these presents to be signed by Benjamin Seaver, mayor of said city, thereto duly authorized; and the said Sleeper and Reed have hereunto set their hands and seals, this fifth day of August, A. D. eighteen hundred and fifty-three.

Whereas the above named city of Boston has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the circuit court, for the first circuit, in and for the district of Rhode Island:

Now, therefore, the condition of this obligation is such, that if the above named City of Boston shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be null and void, otherwise the same shall be and remain in full force and effect.

THE CITY OF BOSTON,
By BENJAMIN SEAVER, *Mayor*. [Seal of the City of Boston.]
JACOB SLEEPER, [L. SEAL.]
SAMPSON REED, [L. SEAL.]

In presence of
JAMES WHITING,
SAM'L C. BURR.

August 8th, 1853. Bond approved.
JOHN PITMAN, *District judge*.

DAVID R. LECRAW
vs.
THE CITY OF BOSTON.

Bill of exceptions.

Be it remembered, that at a term of the circuit court of the United States, for the first circuit, holden at Newport within and for the district of Rhode Island, on the fifteenth day of June, A. D. 1853, by the honorable John Pitman, esquire, district judge of the United States, for the Rhode Island district, holding said circuit court, came David R. Lecraw, of Nashville, in the State of New Hampshire, as he was surviving partner of the firm of Lecraw & Perkins, and in his indivi-

dual right and by an action of trespass on the case, declared against the City of Boston, a corporation duly established under and by virtue of the laws of Massachusetts, as follows, to wit:

In a plea of trespass on the case, for that on the first day of July, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life, but since deceased, were copartners, under the firm and style of Lecraw & Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon, and as partners were possessed as a portion of their partnership property of and in, a certain wharf estate, with the appurtenances, situated in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf, which was occupied by one Herrick, as their tenant; and the easterly end of said wharf lying beyond said building, which was occupied by Sprague and Soule, as tenants at will of the said Lecraw and Perkins. And the plaintiff says, that by reason of the premises, the said Lecraw & Perkins ought to have had the free and uninterrupted use of the long dock, lying south of said wharf, for the purpose of access to said wharf, and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf. Yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their agents prevented said Lecraw & Perkins from using the same, and drove piles and placed a drain along said dock and so near to said Bull wharf that the said Lecraw & Perkins were deprived of the use of said dock, and could not have access by said dock to their wharf, for the purpose of lading and unlading their vessels, as they before had been accustomed, and still of right should have been allowed to do. And the plaintiff says, that the said defendants kept and continued said piles and drain in said dock, from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one. And the plaintiff says, that by reason of said disturbance of and interference with the use of said dock, the said Lecraw & Perkins, and the said plaintiff since the decease of said Perkins, lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf; and that the said plaintiff and the said Lecraw & Perkins have been compelled to expend and have expended the sum of two thousand dollars for labor and for building bridges, for the purpose of unlading vessels and moving coal upon said wharf, which it would not have been necessary to expend but for said obstruction. And that the said plaintiff and the said Lecraw & Perkins have been compelled to hire, and have hired, other dock privileges for the necessary business of said wharf, and have incurred therefor during said period of continuing said obstruction a large expense, to wit, the expense of four thousand dollars. And the said plaintiff has lost, and the said Lecraw & Perkins have lost, by reason

of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf. And the plaintiff says, that on the nineteenth day of November, in the year eighteen hundred and forty-nine, the said Perkins died, and he, the said plaintiff, is the sole surviving partner of said firm.

Also for that, on the first day of July, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life, but since deceased, were copartners under the firm and style of Lecraw & Perkins, in the business of wood and coal merchants, and carried on said business at the wharf hereinafter described; and the plaintiff says, that as such partners they were in the possession of a certain wharf estate, with the appurtenances, situate in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf; and the plaintiff says, that by reason of the premises, the said Lecraw & Perkins ought of right to have uninterrupted use of the long dock lying south of said wharf for the purpose of access to said wharf and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf, and the plaintiff says that right did belong and appertain to said wharf; yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their servants prevented the said Lecraw & Perkins from using the same, and drove piles and placed a drain along said dock and so near to said Bull wharf that the said Lecraw & Perkins were deprived of the use of said dock, and could not have access to their wharf by said dock for the purpose of lading and unlading their vessels in so free a manner as they before had been accustomed, and still of right should have been allowed to do. And the plaintiff says, that the said defendants continued and kept said piles and drain in said dock from that time until the nineteenth day of November, in the year of our Lord eighteen hundred forty-nine. And the plaintiff says, that by reason of the aforesaid interruption of and interference with the use of said dock, the said Lecraw & Perkins were greatly injured in their business, and lost profits of business which they otherwise would have received, and were obliged to employ many additional servants and agents, and were obliged to build bridges for the use of their wharf at a large expense, and were also obliged to hire at a large expense additional dock privileges; and the plaintiff says, that on the nineteenth day of November aforesaid the said Perkins died, and the said plaintiff is the sole surviving partner of said firm of Lecraw & Perkins.

Also for that, the said Lecraw, on the twentieth day of November, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and

coal merchant, and was in possession of a certain wharf estate, with the appurtenances, situated in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf.

And the plaintiff says, that by reason of the premises he ought of right to have had the free and uninterrupted use of the long dock lying south of said wharf for the purpose of access to said wharf and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf, and the plaintiff says that right did belong to said Bull wharf, and was appurtenant thereto. Yet the defendants, well knowing the premises, but contriving and intending to injure the plaintiff, entered into and upon said dock, and without right drove piles and placed a drain along the same so near to said Bull wharf that the plaintiff was deprived of the use of said dock, and could not have access to his said wharf with the vessels which he used in and about his business, for the purpose of unlading the same in so free and undisturbed a manner as he had before been accustomed to do, and of right still ought to have been allowed to do; and the plaintiff says, the said defendants continued and kept said piles and drain in said dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one, and during all that time deprived him of his rights to the use of said dock.

And the plaintiff says, that by reason of the aforesaid interruption of and interference with the use of said dock, he has been greatly injured in his aforesaid business, and lost profits of his business which he otherwise would have received, and has been obliged to pay and has paid large sums of money for having additional servants and agents in his business, and has been compelled necessarily to pay and has paid large sums of money for the use of other dock privileges in order to carry on his business aforesaid, and has incurred large expenses in and about his business which he otherwise would not have been compelled to do. To the damage of the said plaintiff, as he says, the sum of ten thousand dollars.

United States circuit court, June term, 1853.

And now the plaintiff moves this honorable court for leave to file the following additional counts to his declaration in the above entitled cause, by his attorney, Henry F. Durant.

Also for that, on the first day of July, in the year of our Lord eighteen hundred forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life, but since deceased, were copartners under the firm and style of Lecraw & Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon, and as a portion of their partnership property were in possession of, a certain wharf estate, with the appurtenances, situated in Boston aforesaid, on Broad street so called, and being the wharf estate known as and called "the Bull wharf," excepting the attic of the long building on said wharf and a building at the easterly end of said wharf which was occupied by one Herrick

of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf. And the plaintiff says, that on the nineteenth day of November, in the year eighteen hundred and forty-nine, the said Perkins died, and he, the said plaintiff, is the sole surviving partner of said firm.

Also for that, on the first day of July, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life, but since deceased, were copartners under the firm and style of Lecraw & Perkins, in the business of wood and coal merchants, and carried on said business at the wharf hereinafter described; and the plaintiff says, that as such partners they were in the possession of a certain wharf estate, with the appurtenances, situate in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf; and the plaintiff says, that by reason of the premises, the said Lecraw & Perkins ought of right to have uninterrupted use of the long dock lying south of said wharf for the purpose of access to said wharf and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf, and the plaintiff says that right did belong and appertain to said wharf; yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their servants prevented the said Lecraw & Perkins from using the same, and drove piles and placed a drain along said dock and so near to said Bull wharf that the said Lecraw & Perkins were deprived of the use of said dock, and could not have access to their wharf by said dock for the purpose of lading and unlading their vessels in so free a manner as they before had been accustomed, and still of right should have been allowed to do. And the plaintiff says, that the said defendants continued and kept said piles and drain in said dock from that time until the nineteenth day of November, in the year of our Lord eighteen hundred forty-nine. And the plaintiff says, that by reason of the aforesaid interruption of and interference with the use of said dock, the said Lecraw & Perkins were greatly injured in their business, and lost profits of business which they otherwise would have received, and were obliged to employ many additional servants and agents, and were obliged to build bridges for the use of their wharf at a large expense, and were also obliged to hire at a large expense additional dock privileges; and the plaintiff says, that on the nineteenth day of November aforesaid the said Perkins died, and the said plaintiff is the sole surviving partner of said firm of Lecraw & Perkins.

Also for that, the said Lecraw, on the twentieth day of November, in the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and

coal merchant, and was in possession of a certain wharf estate, with the appurtenances, situated in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf.

And the plaintiff says, that by reason of the premises he ought of right to have had the free and uninterrupted use of the long dock lying south of said wharf for the purpose of access to said wharf and of lading and unlading vessels at the same, as belonging and appertaining to said Bull wharf, and the plaintiff says that right did belong to said Bull wharf, and was appurtenant thereto. Yet the defendants, well knowing the premises, but contriving and intending to injure the plaintiff, entered into and upon said dock, and without right drove piles and placed a drain along the same so near to said Bull wharf that the plaintiff was deprived of the use of said dock, and could not have access to his said wharf with the vessels which he used in and about his business, for the purpose of unlading the same in so free and undisturbed a manner as he had before been accustomed to do, and of right still ought to have been allowed to do; and the plaintiff says, the said defendants continued and kept said piles and drain in said dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one, and during all that time deprived him of his rights to the use of said dock.

And the plaintiff says, that by reason of the aforesaid interruption of and interference with the use of said dock, he has been greatly injured in his aforesaid business, and lost profits of his business which he otherwise would have received, and has been obliged to pay and has paid large sums of money for having additional servants and agents in his business, and has been compelled necessarily to pay and has paid large sums of money for the use of other dock privileges in order to carry on his business aforesaid, and has incurred large expenses in and about his business which he otherwise would not have been compelled to do. To the damage of the said plaintiff, as he says, the sum of ten thousand dollars.

United States circuit court, June term, 1853.

And now the plaintiff moves this honorable court for leave to file the following additional counts to his declaration in the above entitled cause, by his attorney, Henry F. Durant.

Also for that, on the first day of July, in the year of our Lord eighteen hundred forty-nine, at Boston, in the district of Massachusetts, the plaintiff and one William B. Perkins, then in full life, but since deceased, were copartners under the firm and style of Lecraw & Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon, and as a portion of their partnership property were in possession of, a certain wharf estate, with the appurtenances, situated in Boston aforesaid, on Broad street so called, and being the wharf estate known as and called "the Bull wharf," excepting the attic of the long building on said wharf and a building at the easterly end of said wharf which was occupied by one Herrick

as their tenant, and the easterly end of said wharf lying beyond said building, which was occupied by Sprague & Soule, as tenants at will of said Lecraw & Perkins. And the plaintiff says, that by reason of the premises, the said Lecraw & Perkins ought to have had the free and uninterrupted use of the long dock lying south of said wharf, for the purpose of access to said wharf from the sea with vessels, and of passing to and from the sea with vessels, and of lading and unlading vessels at said wharf, and of laying vessels on the flats in said dock, as belonging and appertaining to said "Bull wharf." Yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully entered into and upon said dock, and by their agents and servants prevented the said Lecraw & Perkins from using the same and from using their wharf, and drove piles into said dock, and placed a drain constructed of planks and timbers along said dock, and so near to said Bull wharf that the said Lecraw & Perkins were thereby deprived of the use of said dock, and could not have access by said dock to their wharf for the purpose of lading and unlading their vessels, or of laying vessels on the flats in the same, as they before had been accustomed, and still of right should have been allowed to do. And the plaintiff says, that the said defendants kept and continued said piles and drain in said dock from that time until the nineteenth day of November, in the year eighteen hundred and forty-nine, and that by reason of said disturbance of and interference with the use of said dock, the said Lecraw & Perkins lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which they were obliged to abate and deduct from the rent of their tenants to prevent them from leaving the premises; and that the said Lecraw & Perkins have been compelled to expend, and have expended, the sum of three thousand dollars for labor and for building bridges, and for unlading vessels, and for moving coal upon said wharf, which it would not have been necessary to expend but for the obstruction and grievance aforesaid; and the said Lecraw & Perkins have been compelled to hire, and have hired, other dock privileges for the necessary business of said wharf, and have incurred therefor during said period of continuing said obstruction a large expense, to wit, the expense of four thousand dollars; and have been compelled to pay higher prices for wood and coal than they would otherwise have been compelled to pay, and have lost, by reason of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on their business aforesaid, and by the use and rent of said wharf for wharfage and wharf privileges. And the plaintiff says, that on the nineteenth day of November, eighteen hundred and forty-nine, the said Perkins died, and the said plaintiff is the sole surviving partner of said firm of Lecraw & Perkins.

Also for that the said plaintiff, on the twentieth day of November, in

the year of our Lord eighteen hundred and forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and coal merchant, and was in possession of a certain wharf estate, with the appurtenances, situated in Broad street so called, in said Boston, and being the wharf estate called and known as "the Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf, which was occupied by one Herrick as his tenant, and the easterly end of said wharf beyond said building, which was occupied by Sprague & Soule as his tenants; and the plaintiff says that by reason of the premises, he, the said Lecraw, ought to have had the free and uninterrupted use of the long dock, lying south of said wharf, for the purpose of access to said wharf from the sea with vessels, and of passing to and from the sea with vessels, and of lading and unlading vessels at said wharf, and of laying vessels on the flats in said dock, as belonging and appertaining to said Bull wharf; yet the said defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the plaintiff in that behalf, on the twentieth day of November aforesaid, wrongfully entered into and upon said dock, and by their agents and servants prevented the plaintiff from using the same, and from using his wharf, and drove piles into said dock, and placed a drain constructed of planks and timbers along the dock aforesaid, and so near to said Bull wharf that the said plaintiff was thereby deprived of the use of said dock, and could not have access through said dock to his wharf, for the purpose of lading and unlading vessels, or of laying vessels on the flats in the same, as he before had been accustomed, and still of right ought to have been allowed to do; and the plaintiff says that the said defendants kept and continued said piles and drain in said dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one; and that by reason of said disturbance of and interference with the use of said dock, the said plaintiff lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which he was obliged to deduct and abate from the rent of his tenants to prevent them from leaving the premises; and that he had been compelled to expend, and has expended the sum of three thousand dollars for labor, and for building bridges, and for unlading vessels, and for moving coal upon said wharf, which it would not have been necessary to expend but for the obstruction and grievance aforesaid; and the plaintiff has been compelled to hire, and has hired, other dock privileges for the necessary bu-iness of said wharf, and has incurred therefor, during said period of continuing said obstruction, a large expense, to wit, the expense of four thousand dollars, and has been compelled to pay higher prices for his wood, and for his coal, than he would otherwise have been compelled to pay; and has lost, by reason of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which he would otherwise have received

from the profits of his business aforesaid, and for the use and rent of said wharf, for wharfage and wharf privileges, and has been otherwise generally injured in his property and business.

And also for that on the first day of July, in the year 1849, at Boston aforesaid, in the district of Massachusetts aforesaid, the plaintiff and one William B. Perkins, since deceased, were copartners, under the firm of Lecraw & Perkins, in the business of buying and selling wood and coal in said Boston, and carried on said business upon, and as partners were in possession as a portion of their partnership property of, a certain wharf estate, with the appurtenances, situated in said Boston, known as "the Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf which was occupied by one Herrick as their tenant, and the easterly end of said wharf, lying beyond said building, which was occupied by Sprague & Soule as tenants at will of the said Lecraw & Perkins, which said Bull wharf is bounded as follows, namely: Westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches or thereabouts; northerly or northeasterly, on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly and southeasterly on the commissioners' line so called, in Boston harbor, there measuring fifty-two feet or thereabouts; southerly or southwesterly partly on the town way or dock, there measuring six hundred and sixty feet, more or less. And the plaintiff avers, that said dock forming the southerly boundary of the estate so by him and the said Perkins, deceased, possessed, and extending between said Bull wharf and Summer street wharf so called, was at the time of the grievances herein after mentioned, and for a long time prior thereto had been, part of the harbor of Boston, and a public dock, slip, or way, navigable by vessels, and over which the waters of the sea ebbed and flowed, and by reason thereof the said Lecraw and Perkins ought to have had, and still of right ought to have been allowed to pass and repass, as over a navigable highway with boats and vessels of every description, upon, over and through said dock from the wharf so by them possessed as aforesaid to the channel of the sea, and from said channel of the sea to the said wharf by them possessed, and to use said dock for all purposes of navigation. Yet the defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day of July aforesaid, wrongfully and injuriously placed and erected divers large quantities of wood and timber in and across the said way or dock, to wit, by driving piles therein, and placed a drain along the same, and kept and continued said piles and drain in said way or dock from that time until the 19th day of November, in the year of our Lord eighteen hundred and forty nine, during all of which time the said way or dock was, and is still, greatly obstructed and stopped up, and by means thereof the said Lecraw & Perkins could not pass or repass with their vessels from the sea to their wharf during the time aforesaid, or any part thereof, till the time of the said Perkins's decease, herein after

mentioned, nor have or enjoy said dock or way as they, the said Lecraw & Perkins, ought to have done, and otherwise might and would have done; and the said Lecraw & Perkins have been and are deprived of the use, benefit and advantage thereof, as and for a navigable highway, or as a dock. And the plaintiff says that by reason of said disturbance of and interference with the use of said dock or way, the said Lecraw & Perkins lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which they were obliged to abate from their tenants' rent to prevent their leaving the premises; and that the said Lecraw & Perkins have been compelled to expend, and have expended, the sum of two thousand dollars for labor and for building bridges, for the purpose of unlading vessels and moving coal upon said Bull wharf, which it would not have been necessary to expend but for said obstruction; and that the said Lecraw & Perkins have been compelled to hire, and have hired, other dock privileges, for the necessary business of said wharf by them possessed, and have incurred therefor, during said period of continuing said obstruction, a large expense, to wit, the expense of four thousand dollars; and have been compelled to pay higher prices for wood and coal; and the said Lecraw & Perkins have lost, by reason of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf, and by the use and rent of said wharf for wharfage.

And the plaintiff says, that on the nineteenth day of November, in the year eighteen hundred forty-nine, the said Perkins died, and he, the said plaintiff, is the sole surviving partner of said firm of Lecraw & Perkins.

Also, for that the said Lecraw, on the 20th day of November, eighteen hundred forty-nine, at Boston, in the district of Massachusetts, carried on business as a wood and coal merchant, and was in possession of a certain wharf estate, with the appurtenances, situated in said Boston, and known as "the Bull wharf," excepting the attic of the long building on said wharf, and a building at the easterly end of said wharf, which was occupied by one Herrick as his tenant, and the easterly end of said wharf beyond said building, which was occupied by Sprague & Soule as his tenants at will; which said Bull wharf is bounded as follows, namely: westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches or thereabouts; northerly or nothwesterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on the commissioners' line so called, in Boston harbor, there measuring fifty-two feet or thereabouts; southerly or southwesterly partly on the town way or dock, there measuring six hundred and sixty feet, more or less. And the plaintiff avers that said dock, forming the southerly boundary of the estate so by him possessed, and extending

between said Bull wharf and Summer street wharf so called, was at the time of the grievances hereinafter mentioned, and for a long time prior thereto had been, part of the harbor of Boston, and a public dock, slip, or way, navigable by vessels, and over which the waters of the sea ebbed and flowed, and by reason thereof the said Lecraw ought to have had, and still of right ought to have been allowed to pass and repass, as over a navigable highway, with boats of every description, upon, over, and through said dock from the wharf so by him possessed as aforesaid, to the channel of the sea, and from the channel of the sea to the said wharf by him possessed, and to use said dock for all purposes of navigation. Yet the defendants, well knowing the premises, but wrongfully and unjustly contriving to injure the said Lecraw & Perkins in that behalf, on the second day July aforesaid, wrongfully and injuriously placed and erected divers large quantities of wood and timber in and across the said way *and* or dock, to wit, by driving piles therein, and placed a drain along the same, and kept and continued said piles and drain in said way or dock from that time until the first day of April, in the year of our Lord eighteen hundred and fifty-one, during all of which time the said way or dock was, and is still, greatly obstructed and stopped up, and by means thereof the said Lecraw could not pass or repass with his vessels from the sea to his wharf during the time aforesaid or any part thereof, nor have or enjoy said dock or way, as he, the said Lecraw, ought to have done, and otherwise might and would have done; and the said Lecraw had been and is deprived of the use, benefit, and advantage thereof as and for a navigable highway, or as a dock; and the said Lecraw says, that by reason of said disturbance of and interference with the use of said dock or way, he, the said Lecraw, lost a large sum of money, to wit, the sum of two hundred dollars, which would otherwise have been paid for the rent of the easterly end of said wharf, and which he was obliged to abate from his tenants' rent to prevent their leaving the premises; and that the said Lecraw has been compelled to expend, and has expended, the sum of two thousand dollars for labor and for building bridges for the purpose of unlading vessels and moving coal upon said Bull wharf, which it would not have been necessary to expend but for said obstruction; and that the said Lecraw has been compelled to hire, and has hired other dock privileges for the necessary business of said wharf by him possessed, and has incurred therefor during said period of continuing said obstruction a large expense, to wit, the expense of four thousand dollars, and has been compelled to pay higher prices for wood and coal; and the said Lecraw has lost, by reason of said obstruction and the injury consequent thereupon to the business of said wharf, a large sum of money, to wit, the sum of five thousand dollars, which would otherwise have been realized by carrying on the business aforesaid at said wharf, and by the use and rent of said wharf for wharfage.

1404.

Circuit court of the United States, first circuit, district of Massachusetts.—October term, 1832.

DAVID R. LECRAW
vs.
CITY OF BOSTON.

And now the defendants come into court and respectfully represent, that the above entitled action is a suit brought by the plaintiff, alleging himself to be a citizen of the State of New Hampshire, against the City of Boston, a corporation established and whose citizens reside within the said district of Massachusetts, for the recovery of damages for an alleged nuisance or encroachment upon certain rights of way or easements claimed by the plaintiff to be appurtenant to certain wharves and tenements of which he declares himself to be the owner, and which damages are laid in his writ and declaration at the sum of ten thousand dollars; that these defendants, denying that the plaintiff has any such rights of way or easements appurtenant to any such wharves or tenements as is in his said declaration alleged, have pleaded that they are not guilty, and that the case now stands for trial by the jury.

That by the laws of this Commonwealth of Massachusetts, all the citizens or inhabitants of any city or town within the same, and all their estates, real and personal, are liable to be taken on execution for the payment of any debt due from such city or town to the plaintiff in such execution, and the said citizens or inhabitants are liable to be taxed and assessed in order to raise the means of paying and discharging such debts; and that the damages, if any shall be received by the plaintiff in this suit, must be paid out of money to be raised by levy of an execution to be issued therein upon the estates of the said city, or of some one or more of the inhabitants thereof, or of moneys to be assessed upon them; so that every inhabitant or citizen of said city of Boston, liable to taxation, is directly interested in the result of said suit.

That the honorable the associate judge of the Supreme Court of the United States, for this circuit, is incompetent to sit in the trial of said suit by reason of having heretofore been of counsel in a case now pending in regard to the same cause of action, and that the honorable the judge of the district court is an inhabitant and citizen of said city of Boston, paying taxes therein, and the amount of whose taxes must be to a greater or less degree dependent upon the judgment that shall be finally rendered therein, and so is directly interested in the result thereof.

Wherefore, the defendants humbly pray that process may issue for the removal of the said suit to some neighboring circuit of the Supreme Court of the United States for the trial thereof, pursuant to the statute in such case made and provided.

P. W. CHANDLER,
Of counsel for the defendants.

A true copy. Attest: H. W. FULLER, *Clerk.*

And thereupon the said city of Boston pleaded by its attorney, as follows:

"And now the said defendant comes, &c., when, &c., and for plea says, that it is not guilty of the grievances laid to its charge in manner and form as the plaintiff hath thereof complained against it, and of this puts itself upon the country.

DISTRICT OF MASSACHUSETTS.

October term, 1852.

DAVID R. LECRAW
vs.
THE CITY OF BOSTON.

It having appeared that the honorable Benjamin R. Curtis, one of the associate justices of the Supreme Court of the United States, who is assigned to this court, is so connected with the said plaintiff as to render it in his opinion improper for him to sit in the trial of this suit; and also that the honorable Peleg Sprague, district judge of the United States for this district, is an inhabitant of the said city of Boston, and concerned in interest in this cause, so as to render it in his opinion improper for him to sit in the trial thereof: It is therefore ordered by the court (both judges concurring) that the clerk do enter these facts on the record of the court.

And it is further ordered, that an authenticated copy of the record and all proceedings in the suit be forthwith certified to the circuit court of the United States within and for the district of Rhode Island, the same being the most convenient circuit court in the next adjacent State.

By the court: H. W. FULLER, *Clerk.*

And the said plaintiff then and there, to maintain and prove the issue on his part, submitted to the court and jury, as evidence therefor, the documents and oral testimony as follows, to wit:

1*b*. "Nicholas Baxter, his possession within the limits of Boston. One house and lott, bounded with the street or land north and west; Edward Browne and the bay, east; Mathew Lyons, southward."

A true copy from the book of possession.

Attest: SAM'L F. McCLEARY, jr.,
City clerk.

3*b*. "May 25th, 1674. At a meeting of Capt. Thomas, James Ollver, Mr. Hezekiah Usher, Mr. John Lake, Capt. Thomas Lake, John Joyliffe, Mr. Thos. Brattle, John Bull hath libertie to wharfe before his owne land in proportion with his neighbors."

A true copy from the records of the town of Boston.

Attest: SAM'L F. McCLEARY, jr.,
City clerk.

86. "Anno 1708, May 3. The street leading easterly from Dr. Okes, his corner in Newbery street, passing by the dwelling-house of Capt. Tim'd Clark, extending to ye sea, ——— Summer street."

A true copy from the records of the town of Boston.
Attest: SAM'L F. McCLEARY, jr.

Copies plaintiff's documents.

No. 1. "Richard Gridley, his possession in Boston, one house and lott, bounded with the streete south and west, the bay easterly, and John Harrison northerly.

Also another lott bounded with Robert Turner northwest, John Harrison southwest, the bay southeast, and the fort northeast."

A true copy from the book of possessions of the town of Boston.
Attest: S. F. McCLEARY, *City clerk.*

No. 2. "31st March, 1673. At a meeting of Capt. Thomas Lake, John Joyliff, Mr. Hezekiah Usher, Mr. Thomas Brattle, Capt. James Oliver, Capt. William Davis, Mr. John Richards; libertie is granted to Richard Gridlie to wharfe before his owne land in proportion with other men."

A true copy of records of the town of Boston.
Attest: S. F. McCLEARY,
City clerk.

No. 3. "*Richard Gridlie prohibition to wharfe.*

"Whereas, upon the 31st of March, 1673, libertie was granted to Richard Gridley to wharfe before his own land in proportion with other men, and he hath lately, for ends stated, put a proportion upon the flatts not only before his own lands, but the towne's ground and highway adjoining his land: It is hereby ordered, that the s'd Gridley do not proceed in wharfing there without the consent and approbation of ye selectmen first had and obtained, upon the penalty of twelve shillings."

A true copy of records of the town of Boston.
Attest: S. F. McCLEARY, *City clerk.*

No. 4. *March* 11, 1672. *Gridley's deed to John Gill.*

"To all people to whome this present writing shall come: Richard Gridley of Boston, in the county of Suffolk, in the Colony of Massachusetts, in New England, sendeth greeting:

Know yee, that I, the said Richard Gridley, for and in consideration of the sum of twenty-five pounds of lawful money of New England, to mee in hand at and before then sealing and delivery of these presents by John Gill, of Boston aforesaid, mariner, well and truly payed, the receipt whereof I doe hereby acknowledge, and myselfe therewith fully satisfied and contented, and thereof, and every of every part thereof,

do hereby acquitt and discharge to said John Gill, his heirs, executors, administrators and assigns forever, by these presents, have given, granted, bargained, sold, aliened, enfeoffed and confirmed, and by these presents do fully, clearly and absolutely give, grant, bargain, sell, alien, enfeoff and confirm unto the s'd John Gill, all that piece and parcel of land situate, lieing and being neare unto the s'd Richard Grigley's limekill, in the southerly end of the s'd towne of Boston, being butted and bounded westerly with the land of James Flood, extending itself by the s'd Flood's line, forty feet; northerly with the land of Robert Carver, southerly with the highway, and easterly with the sea ranging from the said James Flood's line to low water-mark, excepting only, and it is hereby reserved out of the said grant, a cartway through the said piece of land at the end of forty foot to be measured downward from the said James Flood's line towards the sea, for the use and benefit of the said Robert Carver's house.

To have and to hold the s'd parcell of land with all the profits, privileges and appurtenances to the same belonging or in any wise appertaining, and also all writings, deeds and evidences touching and concerning the premises only, or only any part thereof unto the said John Gill, his heirs, executors, administrators and assigns, and to his and their owne sole and proper use and behoof forever. And I, the said Richard Gridley, doe for mee, my heirs, ex'ors and administrators, covenant, promise and grant by these presents, that at the tyme of then sealing and delivery of these presents, I am the true, sole and lawful owner of all the afore bargained premises, and am lawfully seised of and in the same and every part thereof in my owne proper right; and that I have in myselfe full power, good right and lawful authority to grant, sell, convey and assure the same unto the said John Gill, his heirs, executors, administrators and assigns, as a good, perfect and absolute estate of inheritance in fee simple without any condition, reservation or limitation whatsoever, so as to alter, change, defeat or make void the same; and that the s'd John Gill, his heirs, executors, administrators and assigns, shall and may, by force and virtue of these presents, from tyme to tyme, and at all tymes forever hereafter, lawfully, peaceably and quietly have, hold, use, occupie, possess and enjoy the above granted premises with the appurtenances without any lawful let, sute, troble, denyall, interruption or disturbance of me, the s'd Richard Gridley, my heirs, executors, administrators or assigns, or of any other person or persons whatsoever lawfully clayming by, from or under us, or any of us, or by our or any of our means, act, consent, title, privity or procurement. And I, the said Richard Gridley, for me, my heirs, executors and administrators and every of us, do further covenant, promiss and grant by these presents, that the said parcell of land with all the rights, privileges, members and appurtenances are free and clear, and freely, cleerly acquitted, exonorated and discharged, of and from all, and all manner of former and other gifts, grants, bargains, sales, leases, mortgage, joyntures, dowers, titles of dower, judgments, executions, entayles, forfeitures, and of and from all other titles, trobles,

charges and incumbrances whatsoever. And Grace, the wife of mee, the said Richard Gridley, doth by these presents freely, fully and absolutely give, yield up and surrender all her right, title, dower and interest which she had, hath, might or should have had, of, in and to the above mentioned premises or any part thereof, unto the said John Gill, his heirs, executors, administrators and assigns forever. And I, the said Richard Gridley and Grace my wife, shall and will be reddy and willing, at all tymes to give, and will give unto the said John Gill, his heirs, executors, administrators and assigns, such further and ample assurance of all the aforebargained premises as in law or equity can be desired or required.

In witness whereof, we, the said Richard and Grace Gridley, have hereunto set our hands and seals, the eleventh day of March, in the year of our Lord, according to the computation of the church of England, one thousand six hundred seaventy and two; annog regni Regis Car. Secundi, XXV.

Richard R. Gridley, his mark and a seale appendant.
The mark of S. Grace Gridley and a seale appendant.
Signed, sealed and delivered by

RICHARD GRIDLEY.

In the presence of us—
JOHN BULL,
WILLIAM PITMAN,
WILLIAM PINKNEY,
JOHN HAYWARD, sr.

The within mentioned land was staked out, and possession by turf and twig given to the said John Gill by the said Richard Gridley, this 6 of Decem'r, 1673, in presence of us—Elisha Hutchinson, Thomas Bligh, Robt. R. C. Carver, his marke.

This deed was acknowledged by Richard Gridley and Grace, his wife, Dec'r 6, 1673, before me, Edward Tyng, asst.

Recorded and compared 30th, mo. 7 A., office.

GRACE BENDALL, *Recorder.*

A true copy from Suffolk records of deeds, lib. 8, fo. 352.
Attest: HENRY ALLYNE, *Register.*

No. 5.

"May ye 2d, 1674.—Libertie is granted to Thomas Peck to wharfe upon the flatts before his own land, near Richard Gridlie's, fortie-five foote in breadth, according to his upland, and is now staked out; also to Robert Carver to wharf sixtie foote in breadth, according to his land above the flatts adjoining to Thomas Pecke, now also staked out. And whereas upon the 31st of March, 1673, libertie was granted to Richard Gridlie to wharfe before his land, and upon the second of March, 1673|74, a prohibition thereof was ordered for staking it out beyond his bounds: It is now ordered that John Gill, of Dorchester, (to

whom the said Gridley hath sould the privilege of the said flats,) shall have libertie to wharfe fortie feet in breadth before ye said Gridlie's land, next to Robert Carver's, as it is now staked out, and is twentie-eight foote northward from a great rock lying upon the flatts before the highway."

A true copy of records of the town of Boston.

Attest: S. F. McCLEARY,
City clerk.

No. 6.

John Gill's will, Feb. 7, 1678.

"In the name of God, amen. The eighth day of October, anno Domini one thousand six hundred seventy-eight, I, John Gill, of Boston, in the colony of the Massachusetts in New England, yeoman, being weak and infirm of body, but of sound and perfect memory, praised be Almighty God for the same, knowing the uncertainty of this present life, and being desirous to settle that outward estate the Lord hath lent me, do make and ordain this my last will and testament in manner and form following, (that is to say:) First and principally I commend my soul into the hands of Almighty God, my Creator, hoping to receive full pardon and remission of all my sins, and salvation through the alone merits of Jesus Christ, my redeemer, and my body to the earth to be buried in such decent manner as to my executrix, hereinafter named, shall be thought meet and convenient; and as touching such wordly estate as the Lord hath lent me, my will and meaning is, the same shall be employed and bestowed as hereafter in and by this my will is expressed.

Imp's. I do hereby revoke, renounce, and make void all wills by me formerly made, and declare and appoint this my last will and testiment. Item. I will that all the debts that I justly owe to any manner of person or persons whatsoever shall be well and truly paid, or endorsed to be paid, in convenient time after my decease by my executrix hereafter named. Item. I give and bequeath unto my loving daughter, Rebecca Belcher, wife of Joseph Belcher, the sum of five pounds per ann'm, to be paid unto her by my executrix hereafter named, during the natural life of my said daughter, provided it appears to my overseers hereafter named, that she hath real need of the same for buying her apparel and other necessaries. Item. I give and bequeath unto my said daughter, Rebecca, and to the children of her body lawfully begotten, and to their heirs and assigns forever, all the housing and land that is now in the tenure and occupation of my son-in-law, Joseph Belcher, or his assigns. And my will is, that the said housing and land hereby bequeathed to my said daughter shall remain in the hands and under the management of my overseers hereafter named, for the use of my said daughter and her children during the term of the natural life of my son-in-law, Joseph Belcher. Item. My will is, that in case my said daughter, Rebecca, survive her husband, the said

Joseph Belcher, and after his decease, she stand in need of more for her necessary maintenance than the annual income of the estate hereby bequeathed to her, then she shall have, and hereby have and hereby hath liberty to sell any part of the said housing or land hereby given her for her necessary supply. Item. I give and bequeath unto my dear and well beloved wife, Anna Gill, the use, benefit, and improvement of the full remainder of my real and personal estate, whatsoever it is, or wheresoever it may be found, during the term of her widowhood. Item. I give and bequeath all that estate hereby given and bequeathed unto my said wife during her widowhood, unto my grandchild, Joseph Belcher, (who now liveth with me,) and to the heirs of his body lawfully begotten, and to their heirs forever; and for default of such issue, then my will is, that the same shall be equally divided amongst the children of my said daughter, Belcher, to be and remain to them and their heirs forever; provided, always, that my said grandchild, Joseph Belcher, pay, or cause to be paid, unto each of the children that are now living of my said daughter, Rebecca, the sum of twenty pounds ster. in cattle, provisions, or income of the estate, as they come of age. Item. My will is, that if either or any of the said six children die before they attain the age of twenty-one years or day of marriage, that then the twenty pounds hereby bequeathed to such child or children shall be equally divided between the survivors of them. Item. My will is, that my said wife, Anna Gill, shall keep and maintain my said grandchild at school until he attain the age of fourteen years, and then he shall be put an apprentice unto some good trade, such as he shall desire, by advice and consent of my overseers hereafter named. Item. My will is, that in case my said wife shall see meet to marry again, that then she shall have only the use, benefit, and improvement of one half part of the said remainder of my estate during her life, and that she then give unto my overseers, hereafter named, good and sufficient security to keep the housing, fencing, and wharfing that belongs to that half part of my estate that she is to enjoy, in good repair during her lifetime, and to return all the said half part of my said estate to my said grandchild, or others hereby interested therein, in good repair, and without trouble at her decease. And that on the day of my said wife's marriage, my overseers hereafter named shall take into their hands the other half part of the said remainder of my said estate, to be improved by them for the use of my said grandson, Joseph Belcher, until he attain the age of twenty-one years. Also my will is, that in case my said wife shall (during her widowhood) stand in need of a further supply than the income of said estate, that then she shall have, and hereby hath, liberty to sell so much of that part of my estate that she is to have the use of as is needful for her comfortable supply. Item. I do hereby nominate, constitute, and appoint my dear wife the sole executrix of this my last will and testament. Item. I do hereby nominate and appoint my loving friends, Mr. Thomas Mighell, of Milton, Decon Jacob Elliot, of Boston, and my brother, Roger Belling, of Dorchester, the overseers of this my last will, hereby desiring them to use their utmost care and endeavor that this my will be punctually

observed and performed; and also that my said overseers shall be fully paid for what trouble they be at, and what time they spend in the concerns of my estate; and that if any one of my overseers die, then the other two to choose another in their room who is hereby invested with the like power as one of my said overseers; and so from time to time, as need shall require.

In witness whereof, I, the said John Gill, have hereunto set my hand and seal, the day and year first above written.

JOHN GILL, his ⋈ mark. and a seal."

Signed, sealed, and what is contained in these three pages was published by the above named John Gill as his last will and testament, in the presence of us—

JOSEPH HOLMES,
JOHN BULL,
JOHN HAYWARD, jr.

Joseph Holmes and John Hayward made oath in court, 7th Feb'y, 1678, that they were present and did see John Gill sign and seal, and heard him publish this instrument to be his last will, and that when he so did he was of a disposing mind to their best understanding.

Attest: ISA'A ADDINGTON, *Clerk.*

A true copy. Attest:

OLIVER W. B. PEABODY, *Register.*

October 31st, 1683.

No. 7.—*Act of selectmen, of Boston, staking out highway.*

"October 31st, 1683.—The selectmen all mett this day, staked out a highway for the town's use on the southerlie side of ye land belonging to the late John Gill, deceased, being thirtie foote in breadth from the lower corner of said Gill's wharfe next the sea; also the same day staked out another highway for the town's use on ye easterlie side of the proprietor's lands w'ch lyeth betweene the above said highway, and ye way that leads from Deacon Henry Allen's to ye windmill, w'ch way is in breadth from the proprietors' lands ffifty ffoote towards the sea shore.

The fflatts and land betweene this said highway into the sea is granted to the proprietors of ye lands wh'ch are abutters on the s'd way in an equall proportion to their severall fronts on s'd way; always, provided, the said proprietors and abutters maintain in good repairs the said way at their proper cost and charge.

It is also ordered y't ye owners or proprietors of ye lands (above mentioned) latelie belonging to John Gill, deceased, do remove the ffence w'ch now stands in ye highway, and that it be done within six months on the penaltie of twenty shillings per week for every week's default.

A true copy from the records of the town of Boston.

Attest: S. F. McCLARY, *City clerk.*

No. 8.—*Belcher's deed to Darby.*

"To all people unto whom this present deed of sale shall come, Joseph Belcher of Dedham, in the county of Suffolk, within the province of Massachusetts Bay, in New England, clerke, sendeth greeting:

Know ye that I, the s'd Joseph Belcher, for and in consideration of the sum of one hundred and seventy pounds, current money of New England, to me in hand well and truly paid, at and before the enseal-ing and delivery of these presents, by Eleazer Darby, of Boston, in the county of Suffolk and province aforesaid, mariner, the receipt whereof to full content and satisfaction I do hereby acknowledge, and thereof and of every part and parcel thereof, doe acquitt, exonerate and discharge the s'd Eleazer Darby, his heirs, exe'rs, adm'rs and assigns, and every of them forever by these presents; as also for divers other good causes and considerations me hereunto moving, I, the said Joseph Belcher, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents for myself and my heirs doe fully, freely, clearly and absolutely give, grant, bargain, sell, alien, enfeoff, convey and confirm, unto the said Eleazer Darby, his heirs and assigns forever, all that my messuage or tenement, with all the land and ground wherever the same doth stand and is thereunto belonging and adjoining, and the wharfe, beach and flats, that lyeth before the same, to the seaward below the cartway, which runneth between s'd land and wharfe along to the housing and land of John Adams, maulster, scituate, lying and being at the southerly end of the town of Boston afores'd, (heretofore the inheritance of my grandfather, John Gill, late of Boston aforesaid, yeoman, deceased, and by him left unto me and by his last will and testament,) and is butted and bounded on the westerly end by land of the late James Flood, dec'd, on the southerly side of the town highway leading down to the water side, on the easterly end by the sea or salt water, and on the northerly side by the land, beach and flats of the s'd John Adams, (heretofore appertaining to one Robert Carver, since deceased,) or however otherwise bounded or reputed to be bounded, measuring in breadth at the westerly end sixty-one feet eight inches, or thereabouts, and from the said Flood's land to extend by the town's street or highway down to the aforesaid cartway forty foot and in breadth upon the s'd cartway to the land of the said Adams, sixty-one foot eight inches, or thereabout, and from thence to extend in length up from the land of the said Adams to the land of the said Flood, fourty-four foot and an half, and the said wharfe beach and flatts is to extend in length from the lower part of the said cartway eastward down to low water-mark, where it is to measure in breadth fifty-two feet, or thereabout, excepting only, and it is hereby reserved out of this present grant, the aforesaid cartway for the use of s'd John Adams's house, together with all and singular the houses, edifices, buildings and fences, standing thereon, yard, garden, well, water, water-courses, profitts, privilidges, rights, commoditys, hereditam'ts,

emolum'ts and appur's whatsoever, to the said messuage or tenement, land, wharfe and premises belonging, or in any wise appertaining, or therewith now or heretofore used, occupied or enjoyed, accepted, reputed, taken or known as part, parcel or member thereof, or of any part thereof, and the reversion and reversions, remainder and remainders thereof; and also all the estate, right, title, interest, inheritance, use, possession, property, claim and demand whatsoever, of me, the said Joseph Belcher, and my heirs, of, in, and to the same, and every part thereof, with all deeds, writing, and evidences relating thereto; to have and to hold all the above and before mentioned granted and bargained premises, with the appur'ces, and every part and parcel thereof, unto the said Eliezer Darby, his heirs and assigns forever, to his and their own sole and proper use, benefitt and behoofe, from henceforth and forevermore, absolutely without any manner of condition, redemption, or revocation in any wise; and I, the said Joseph Belcher, for me, my heirs, executors and adm'rs, do hereby covenant, promise, grant, and agree to, and with the said Eleazer Darby, his heirs and assigns, in manner and form following, that is to say: that I, the s'd Joseph Belcher, at the time of the ensealing and untill the delivery of these presents, am true, sole and lawful owner of all the afore bargained premises, and stand lawfully seised thereof in my own proper right, of a good, sure and indefeasible estate of inheritance in fee simple, without any manner of condition, reversion, or limitation of use or uses whatsoever, so as to alter, change, defeat, or make void the same, having in myselfe full power, good right, and lawful authority to grant, sell, convey, and assure the premises unto the said Eleazer Darby, his heirs and assigns, in manner and form aforesaid, and according to the true intent and meaning of these presents; and that the said Eleazer Darby, his heirs and assigns, shall and may, by force and virtue of these presents, from henceforth and forever hereafter, lawfully, peaceably and quietly have, hold, use, occupy, possess and enjoy, the above granted and bargained premises, with the appur's, free and clear, and clearly acquitted, exonerated and discharged of and from all and all manner of former and other gifts, grants, bargains, sales, leases, releases, mortgages, jointures, dowers, judgments, executions, entails, fines, forfeitures, seizures, amerciaments, and of and from all other titles, troubles, charges and incumbrances whatsoever; and further, that I, the said Joseph Belcher, for myself, my heirs, ex'ors and adm'rs, and every of them, doe hereby covenant and grant to warrant and defend all the above granted and bargained premises, with the appur'ces, and every part and parcel thereof, unto the said Eleazer Darby, his heirs and assigns, forever, against the lawful claims and demands of all and every person and persons whomsoever, and at any time or times hereafter, on reasonable request or demand of the s'd Eliezer Darby, his heirs or assigns, to give and pass unto him and them forever, (att his or their proper costs,) such further and ample assurance and confirmation of the premises as in law or equity can or may be reasonably devised, advised or required. In witness whereof, I, the said Joseph

Belcher, and Abigail, my present wife, (in testimony of her free consent to these presents, and full relinquishment of all her dower and power of thirds of, in, and to the above granted premises,) have hereunto set our hands and seals, the twenty-ninth day of August, anno Domini one thousand seven hundred, and in the twelfth year of the reign of our sovereign lord, King William the Third, over England, &c.

JOSEPH BELCHER, & a seal.
ABIGAIL BELCHER, & a seal.

Signed, sealed and delivered, in presence of us—
JOHN ADAMS,
ELIEZER MOODY, *sr.*
DANIEL OLIVER.

Received the day and year first within written, of the within named Eleazer Derby, the sum of one hundred and seventy pounds, current money of New England, in full payment, satisfaction and discharge of the purchase consideration within expressed.

pr. JOSEPH BELCHER.

SUFFOLK, *ss.*

BOSTON, *August* 29, 1700.

The within named Joseph Belcher and Abigail, his wife, personally appearing before me, the subscriber, one of his majesty's justices of the peace for the county aforesaid, acknowledged this instrument of bargain and sale to be their act and deed.

(JER.) DRUNER.

July 8, 1704. Received and accordingly ent'd and examined.
p. ADDINGTON DAVENPORT, *Reg'r.*

A true copy from Suffolk records of deeds. Lib. 21, fo. 616.
Attest. HENRY ALLYNE, *Reg.*

No. 9.—*Darby's division.*

[L. S.] SUFFOLK, *ss.*

By the honorable Josiah Willard, esquire, judge of probate, &c.

To Messrs. Stephen Bontineau, Edward Gray, Jacob Sheafe, Col. John Hill, and Thomas Foster, all of Boston, in the county of Suffolk, and sufficient freeholders, greeting:

Pursuant to the power and authority to me granted in and by an act of the general assembly of the province, I do hereby nominate and empower you (or any three of you) to make a just and equal division or partition of the estate in housing and land, whereof Eleazer Darby, late of Boston aforesaid, mariner, deceased, died seised and possessed, to and among his three surviving children, namely, Eleazer, Benjamin and Mehitabel—that is to say: a double portion thereof to the said

Eleazer, the eldest son; and the remainder thereof to the said Benjamin and Mehitabel, equally, pursuant to the dec'd last will, first setting off to his said son, Eleazer, the sum of one hundred ninety-three pounds thirteen shillings and five pence, old tenor, being so much by him paid as executor more than the said deceased's personal estate amounted to, according to your best skill and judgment, (to which you have been sworn before me;) and you are to make return hereof with your doings herein unto myself, at the register's office, so soon as may be.

Given under my hand and the seal of the said court of probate, at Boston, this eleventh day of September, anno Domini 1744.

J. WILLARD.

We, the subscribers, being appointed by the honorable Josiah Willard, esq., judge of probate for the county of Suffolk, &c., to make a division or partition of the real estate of Eleazer Darby, late of Boston, in the county of Suffolk and province of Massachusetts Bay, in New England, mariner, deceased, whereof he died seised and possessed, to and among his three surviving children, namely, Eleazer, Benjamin, and Mehitabel: In pursuance to said order we have viewed said land and divided the same as follows, viz:

Imp's. We have set off to Eleazer Darby, the eldest son of the deceased aforesaid, in consideration of one hundred ninety-three pounds thirteen shillings and five pence, old tenor, being so much by him paid as executor more than the said deceased's personal estate amounted to, as also for his double share, part or portion in the said estate, the house and land, wharf and flats, and all the privileges and appurtenances thereunto belonging, now in the possession of the widow Smith, as it is now butted and bounded, now called or named the Bull-house and wharf. Also one piece of land bounded easterly on the highway, thirty-eight feet; southerly by the land late the estate of Jonathan Simpson, deceased, one hundred and sixty feet; westerly by the land of the Rev. Mr. Samuel Checkley, twenty-five feet; and northerly by the land hereafter to be set off to Benjamin, the other son of said Darby, as per the plan hereto annexed will plainly appear.

2ndly. We set off to Benjamin Darby, the other son of the said Eleazer Darby, dec'd, as his part or portion in said estate, the house and land now in the occupation or possession of his said brother, Eleazer Darby, butted and bounded as follows: Easterly by the aforesaid highway, thirty-four feet three inches; southerly by the aforesaid land set off to said Eleazer Darby; westerly by the aforesaid land of said Samuel Checkley, thirty-three feet six inches; northerly by the land to be set off to said Mehitabel, as the plan thereof will fully show; also the southerly part of the land and wharf below the aforesaid highway, being butted westerly on said way about fifty feet, more or less, with all the flats and privileges thereunto belonging.

And whereas the housing, land and wharf being by estimation valued at two hundred pounds, old tenor, more than is hereafter to be set off to Mehitabel, daughter of Eleazer Darby aforesaid, deceased, we order

and appoint the said Benjamin Darby to pay to his sister Mehitabel Darby, within one month from the date hereof, the sum of one hundred pounds, in bills aforesaid.

3dly. We set off to Mehitabel Darby, the daughter of said Eleazer Darby, deceased, as her part or portion of her said father's estate, the house and land now in the occupation or possession of said Benjamin Darby, butted and bounded as follows, viz: Easterly on the aforesaid highway, twenty-eight feet two inches; southerly by the land set off to Benjamin Darby aforesaid; westerly at the rear, partly by said Checkley and Col. John Hill's land, thirty-nine feet; and northerly by the land of Barthol'w Sears, one hundred twenty-seven feet, as per the plan hereunto annexed will more fully appear; which sum of one hundred pounds, old tenor, which she is to receive of her said brother Benjamin, is in full of her share or portion in said estate.

In witness whereof, we have hereunto set our hands and seals, the sixth day of October, anno Domini, 1744.

STEPHEN BONTINEAU, & a seal.
EDW. GRAY, & a seal.
JACOB SHEAFE, & a seal.
JOHN HILL, & a seal.
THOS. FOSTER, & a seal.

Signed, sealed and delivered in presence of us—
ESTES HATCH,
JOHN OVERING.

SUFFOLK, *ss.*

By the honorable Josiah Willard, esquire, judge of probate, &c.

The within written being presented to me by the subscribers as a division or partition of the real estate of Eleazer Darby, dec'd, I do allow and approve thereof accordingly.

J. WILLARD.

Boston, Nov. 1, 1744. Examined pr. A. BELCHER, *Reg'r.*
A true copy of record. Attest: H. M. WILLIS, *Reg'r.*

No. 10.—*Partition of Robert Robbins.*

SUFFOLK, *ss.*
Commonwealth of Massachusetts.

[L. S.] To Thomas Dawes, esq., and Messrs. John Tileston, and Richard Green, all of Boston, in the county of Suffolk, and all freeholders in the same county, greeting:

Whereas Jonathan Darby Robins, Mary Wallack, (wife of Moses Wallack,) and Ann Bradlee, (wife of David W. Bradlee,) all of Boston, in the county of Suffolk, did petition the supreme judicial court, held at Boston, within and for the county of Suffolk, on the second Tuesday of August last, showing that Mary Robins, mother of the said Jon-

athan, Mary and Ann, was seised of the estate hereafter mentioned in fee, and died so seised thereof at said Boston, in the year 1770, leaving her husband and their father, Robert Robins, of said Boston, mariner, to hold the same as tenant by the courtesy. And also leaving said petitioners, together with their brother, Richard Robins, since deceased, the only heirs at law—the said Richard having died in or about the year 1780, in his minority, his part or share therein descended to his father, the said Robert Robins, who has lately deceased, by means of all which the said Jonathan Darby Robins is now entitled to seven-fifteenths parts of said estate; and the said Mary Wallack and Ann Bradlee to four-fifteenths parts each—the same estate being as follows, to wit, a certain tenement situate at Boston aforesaid, in Summer street, commonly called the Bull-house; also a certain wharf and flats with stores thereon, commonly called Bull's wharf; also a certain piece of wharf land or flats near the same, measuring about fifty feet on Sea street; also a certain small tenement with the land thereto belonging, now occupied by said Jonathan Darby Robins, bounded easterly in front on said Sea street; also a certain other piece of land adjoining the late dwelling-house of said Robert Robins, bounding easterly in front on said Sea street. Also said petitioners, by their said petition further showing, that, as children and devisees named in the will of said Robert Robins, deceased, they are seised in fee each of one undivided third part of and in the following real estate of which said Robert Robins died seised, to wit: a certain dwelling-house and land, lately occupied by said Robert, bounded easterly in front on said Sea street; also of a certain piece of wharf land and flats, lying near thereto, bounded westerly on the same street, there measuring about fifty feet; the last mentioned premises being subject to the widow's dower, as will appear by the records of the probate court; all which premises, those first mentioned and also those last mentioned, said petitioners are desirous should be divided by one common report and partition, and therefore prayed that partition might be made of the several aforedescribed estates, and that the shares of said petitioners might be set off and divided from each other, so that each might hold their respective shares thereof in severalty. Agreeably thereto the same supreme judicial court did grant the prayer of said petitioners, and thereupon appointed you, the said Thomas Dawes, esq., and Messrs. John Tileston and Richard Green to perform the said service. This is therefore to empower you (after you have been duly sworn for that purpose and given due notice to all persons concerned and interested therein, to be present, if they see cause) to make partition of the aforedescribed premsises according to law, by assigning to them, the said petitioners, their respective shares and proportion thereof, by metes and bounds, to hold to them in severalty. And having thus done, you are to make return of the partition by you so made under your hands to the supreme judicial court, together with this warrant, as soon as may be, to the end the same partition may be accepted and recorded as the law directs.

Given under the seal of said court. Witness Francis Dana, esq.,

chief justice of our said supreme judicial court at Boston, the second day of September, in the year of our Lord one thousand eight hundred and one.

Att: CHAS. CUSHING, *Clerk*.

SUFFOLK, *ss*.

BOSTON, *Feb'y 8th*, 1802.

Then the aforenamed Mr. Richard Green personally appeared and made solemn oath, that he would faithfully and impartially, and according to his best skill and judgment, execute and perform the service assigned to him by the aforewritten warrant.

Before me, CHAS. CUSHING,
Just. of peace.

SUFFOLK, *ss*.

BOSTON, *Feb'y 9th*, 1802.

Then the aforenamed Thomas Dawes, esq., and Mr. John Tileston, personally appeared and made solemn oath, that they would faithfully and impartially, and according to their best skill and judgment, execute and perform the service assigned to them by the aforewritten warrant.

Before me, CHAS. CUSHING,
Just. of peace.

We, the subscribers, being appointed by the honorable the justices of the supreme judicial court, to make a division or partition of the real estate of Mary Robins and Robert Robins, deceased, among their surviving children Jonathan Derby Robins, Mary Wallack, wife of Moses Wallack, and Ann Bradlee, wife of David W. Bradlee, agreeably to their petition to the said justices of the supreme judicial court, as will more fully appear by their warrant to us herewith annexed for the said purpose, dated the 2d September, 1801; and after being duly sworn, notifying and hearing the parties, and viewing the premises therein described, do, according to our best skill and judgment, assign, allot, and set off to the said Jonathan Derby Robins, a tenement and land situate at Boston, in Summer street, commonly called the Bull house, butting southerly on Summer street forty feet; northerly on land of Samuel Adams, esq., forty-two feet six inches; westerly on the land of the widow Miller, sixty-one feet eight inches; easterly on a cartway of fifteen feet wide, sixty-one feet eight inches. Also a certain wharf and flats, with the stores thereon, commonly called Bull's wharf, butting westerly on the aforesaid cartway (of fifteen feet wide) sixty-one feet eight inches; easterly on the sea, fifty-two feet; southerly on the town's way, six hundred and eighty feet; northerly on John Tileston, six hundred and eighty feet, all which will be in full of the said Jonathan Derby Robins's seven-fifteenths parts of all and singular the said real estate of which his said mother, Mary Robins, died seised, and in full for said Jonathan Derby Robins's third part of all the said

real estate of which his father, the said Robert Robins, died seised, as set forth in said warrant.

We assign, allot, and set off to Mary Wallack, the said house and land lately owned and occupied by the said Robert Robins, and the said other piece of land adjoining the same house on the southerly side, the whole bounded as follows, to wit: Easterly on Sea street, seventy-two feet three inches; westerly on the land of the widow Freeman, Stephen Higginson, jun'r, and others, fifty-eight feet six inches; northerly on the house and land now occupied by Jonathan Derby Robins, as the same now stands; and southerly on lands of Richard Hunnewell, one hundred and sixty feet, being subject to the widow's dower, as assigned to her according to the probate records: meaning that at the decease of the said widow, that part of the said house and land and appurtenances set off to said widow shall belong to said Mary Wallack and her heirs and assigns. The above estate, so allotted and assigned to said Mary Wallack, together with two hundred dollars to be paid to her by Anne Bradlee, as herein set forth, is in full of her four-fifteenths parts of the above described estate, late belonging to her said father, Robert Robins, as set forth in said warrant.

We assign, allot, and set off to Anne Bradlee, that dwelling-house and land now occupied by Jonathan Derby Robins, butting easterly on Sea street twenty-eight feet two inches; westerly on land of the widow Freeman, Stephen Higginson, jun'r, and others, thirty-nine feet; northerly on Thomas Clemens, one hundred and thirty-seven feet; southerly on land before set off to Mary Wallack, as the same now stands; and also said two certain pieces of wharf and flats lying nearly before the same, the whole measuring on said Sea street westerly, one hundred feet. After the said Anne Bradlee shall have paid to Mary Wallack two hundred dollars, which assignment will be in full of her four-fifteenths parts of the above described estate, late of her mother, said Mary Robins, and also in full of her one-third part of the above described estate late belonging to her said father, Robert Robins, as will more fully appear by the warrant hereto annexed. All which is most humbly submitted.

It being further understood and declared that the said dwelling-house, set off to Mary Wallack, is to possess the privilege of the drain to the aforementioned flats, as it now is, she paying her proportion of the expense that may arise for the repairs of the same.

THOMAS DAWES,
JOHN TILESTON,
RICHARD GREEN.

Boston, March 6th, 1802.

February term, at Boston, A. D. 1802.

The proceedings of the committee on the partition of certain buildings, land, wharves, and flats, in Boston, in the county of Suffolk, belonging to the persons mentioned in the annexed warrant, being returned,

are read, seen, and understood. It is therefore considered by the court, that the same be accepted and recorded as the law directs, and that the petitioners hereafter have and hold their said share in severalty accordingly.

JN. TUCKER, *Clerk*.

We, the said Moses Wallack and Mary Wallack, do hereby acknowledged to have received of the said David W. Bradlee and Ann Bradlee, his wife, the said sum of two hundred dollars, ordered to be paid us by the said commissioners in the aforesaid division and partition. As witness our hands and seals, this twenty-sixth day of March, A. D. 1802.

MOSES WALLACK, [SEAL.]
MARY WALLACK. [SEAL.]

Signed, sealed, and delivered in presence of—
CHAS. CUSHING.

SUFFOLK, *ss*.

BOSTON, *March 26th*, 1802.

Then the above named Moses Wallack and Mary Wallack acknowledged the above written rec't of said sum of two hundred dollars, by them signed as their free act and deed.

Before me, CHAS. CUSHING,
Just. of peace.

Recorded in the clerk's office of the supreme judicial court at Boston. See book 10th, folo. 125, &c., for recording partitions and extents.

March 26th, 1802.

Att: CHAS. CUSHING, *Clerk*.

BOSTON, *March 26th*, 1802.

Received and entered with Suffolk deeds, lib. 200, folo. 203.

Per WM. ALLINE, *Reg'r*.

A true copy—Att: A. W. CHAS. CUSHING, *Clerk*.

N. B. The original is deliv'd to Mr. Jona. D. Robins to his care and keeping.

C. CUSHING.

No. 11.—*Robins's deed to French.*

Know all men by these presents, that I, Jonathan Darby Robins, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, gentleman, in consideration of twenty-one thousand dollars to me paid by John French, Thomas N. French, and Thomas Richardson, all of said Boston, merchants, the receipt whereof is hereby ac-

knowledged, do hereby give, grant, bargain, sell, and convey, unto the said John, Thomas N., and Thomas, their heirs and assigns, a certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded and described as follows, viz: Westerly or northwesterly on Broad street, there measuring sixty-two feet and three inches, or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low water-mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described; with all the right, title, and interest I may have in the soil, at the upper end of said wharf, over which said Broad street passes, subject to all the rights, easements, and privileges the said city of Boston may have therein; meaning to convey to the said grantees all my interest in the Bull wharf and flats, which was one of the estates set off to me in severalty by the division of my father's and mother's estate, dated March 6, 1802, and recorded with Suffolk deeds, lib. 200, fol. 203, subject to the rights, easements, and privileges which the said city of Boston may have therein; to have and to hold the above granted premises, with the privileges and appurtenances thereto belonging, to the said John, Thomas N., and Thomas, their heirs and assigns, to their use and behoof forever. And I, the said Jonathan D. Robins, for myself, and my heirs, executors, and administrators, do covenant with the said John, Thomas N., and Thomas, their heirs and assigns, that I am lawfully seised in fee of the above granted premises; that they are free from all encumbrances, excepting what may have been done, caused, or occasioned by the said city of Boston. That I have good right to sell and convey the same to the said John, Thomas N., and Thomas as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same, to the said John, Thomas N., and Thomas, their heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Jonathan Derby Robins, widower, have hereunto set my hand and seal, this twenty-ninth day of July, in the year of our Lord eighteen hundred and thirty-five.

J. D. ROBINS, and a seal.

Signed, sealed, and delivered in presence of us—
RICH'D ROBINS,
ELIZA C. ROBINS.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

July 30*th*, *A. D.* 1835.

Then personally appeared the above named Jonathan D. Robins, and acknowledged the foregoing instrument to be his free act and deed.

Before me, RICH'D ROBINS,
Justice of the peace.

BOSTON, *July* 30, 1835.

Received and entered with Suffolk deeds, lib. 394, fol. 73.
By HENRY ALLINE, *Reg.*

No. 12.—*French to Richardson.*

Know all men by these presents, that I, John French, of the city of Boston, merchant, in the Commonwealth of Massachusetts, in consideration of six thousand two hundred dollars to me paid by Thomas Richardson, of the city of Boston and State aforesaid, iron-founder, the receipt whereof is hereby acknowledged, do by these presents grant, remise, release, and forever quit claim unto the said Richardson, heirs and assigns, all my right, title, interest and claim in and to a certain wharf estate and flats conveyed to me by Isaac P. Osgood, guardian, by deed bearing date fifth day of June, anno Domini eighteen hundred and thirty-five, and recorded in Suffolk records, lib. 392, folio 84, and described as follows: "A certain lot of land situate on Sea street, in said Boston, and bounded as follows, to wit: northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street and by the south side of Summer street, to the channel; then bounded on the north by Sea street, from the aforesaid corner to the land of David W. Bradlee and Ann, his wife; then bounded southerly by the said land of the said Bradley and Ann, his wife, in her right, and extending from Sea street out to the channel, and then bounded easterly by the channel, or however otherwise the same is bounded." Also all my right, title, interest, and claim in and to a certain other wharf and flats conveyed by deed of J. D. Robins, dated the twentieth day of July, A. D. 1835, and recorded in Suffolk deeds, lib. 394, fol. 73, and described as follows: "A certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded westerly or northwesterly on Broad street, there measuring sixty-two feet three inches or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low water-mark, there measuring fifty-two feet or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be

bounded and described, with all other right, interest, and easements in said deed."

To have and to hold the above described premises to him, the said Richardson, his heirs and assigns, to his use and behoof forever. And I do covenant for myself, heirs, executors, and administrators, to and with said Richardson, his heirs and assigns, that I will, and my heirs shall warrant and defend the said premises unto said Richardson, his heirs and assigns, against the lawful claims of all persons claiming by, through, or under me, but not otherwise.

And for the consideration aforesaid, and for divers other good and valuable considerations, do hereby release and quit claim unto the said heirs and assigns all my right, claim, or possibility of dower in or out of the afore described premises.

In witness whereof, I, the said John French, have hereunto set my hand and seal, this eighth day of June, in the year of our Lord eighteen hundred and thirty-six.

JOHN FRENCH, and a seal.

Signed, sealed, and delivered in the presence of us—
W. STEVENSON,
ALBERT W. MUNROE.

SUFFOLK, *ss.*

BOSTON, *June* 15, *A. D.* 1836.

Then personally appeared the above named John French, and acknowledged the foregoing instrument to be his free act and deed.
Before me, WILLIAM STEVENSON,
Justice of the peace.

Boston, October 27, 1836.—Received and entered with Suffolk deeds, lib. 411, fol. 290.

By HENRY ALLINE, *Reg.*

No. 13.—*Thomas N. French to Alger.*

Know all men by these presents, that I, Thomas N. French, of the city of Boston, merchant, in consideration of twenty-six hundred dollars to me paid by Cyrus Alger, of said city, iron-founder, the receipt whereof is hereby acknowledged, do by these presents give, grant, bargain, sell and convey unto the said Cyrus Alger, his heirs and assigns, one undivided third part of a certain wharf and flats lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded and described as follows, viz: Westerly or northwesterly on Broad street, there measuring sixty-two feet three inches or thereabouts; northerly or northeasterly on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low water-mark, there measuring fifty-two feet or thereabouts; southerly or southwesterly on the town way or dock, there measuring six hundred and sixty feet, more or less, as described in deed of J. D. Robbins, recorded in Suffolk deeds, lib. 394, fol. 73,

subject to all the right and lien of a certain mortgage on said estate, made to said Jonathan D. Robbins, as reference of the records will show. To have and to hold the above granted premises, with the privileges and appurtenances thereto belonging to the said Cyrus Alger, heirs and assigns, to his and their use and behoof forever. And I, the said Thomas N. French, for myself and my heirs, executors and administrators, do covenant with the said Cyrus Alger, heirs and assigns, that I lawfully seized in fee of the afore granted premises; that they are free from all incumbrances except said mortgage to said Jonathan D. Robbins; that I have good right to sell and convey the same to the said Cyrus Alger as aforesaid; and that I will, and my heirs, executors, and administrators will warrant and defend the same to the said Alger and his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I, the said Thomas N. French, have hereunto set my hand and seal, this twenty-seventh day of October, in the year of our Lord eighteen hundred and thirty-six.

THOMAS N. FRENCH, and a seal.

Signed, sealed and delivered in presence of—
TH. RICHARDSON.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

October 27th, A. D. 1836. Then personally appeared the within named Thomas N. French, and acknowledged the foregoing instrument to be his free act and deed, before me,

HUGH MONTGOMERY,
Justice of the peace.

October 28, 1836, at eight o'clock, a. m. Received, entered, and examined, per

HENRY ALLINE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, lib. 412, fol. 42.

Attest: HENRY ALLINE, *Reg.*

No. 14.—*Alger to Richardson—Quit-claim deed.*

Know all men by these presents, that I, Cyrus Alger, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, iron-founder, in consideration of the sum of one dollar to me paid by Thomas Richardson, of said Boston, gentleman, the receipt whereof is hereby acknowledged, do hereby grant, remise, release, and forever quit claim unto the said Thomas Richardson, his heirs and assigns forever, all my right, title, and interest, both at law and in equity, in, to, and unto a certain wharf and flats, lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded and described as follows, namely: Westerly and northwesterly on Broad street, there measuring sixty-two feet and three inches, or there-

abouts; northerly or northeasterly, on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly on low water-mark, there measuring fifty-two feet, or thereabouts; southerly or southwesterly on other land of said Thomas Richardson, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described, with all the right, title, and interest I may have in the soil at the upper end of said wharf, over which said Broad street passes.

And for the consideration aforesaid, I hereby grant, remise, release, and forever quit claim unto the said Thomas Richardson, his heirs and assigns forever, all my right, title, and interest and estate, both at law and in equity, not only in, to, and unto the wharf and flats aforesaid, (as herein before granted,) but also in, to, and unto every and all extensions of said wharf and flats which heretofore have been or hereafter may be acquired, under and by virtue of any acts or act, or grants or grant of the legislature of the Commonwealth aforesaid, or otherwise; together with all rights of dockage, wharfage, ways, easements, rights, privileges, emoluments, and appurtenances to said wharf and flats, and every and all extensions thereof, already made or hereafter to be made, appertaining and belonging:

To have and to hold the above granted premises, with all the privileges and appurtenances to the same belonging, to the said Thomas Richardson, his heirs and assigns, to his and their use and behoof forever. And I, the said Cyrus Alger, for myself and my heirs, executors and administrators, do covenant with the said Thomas Richardson, his heirs and assigns, that the premises are free from all incumbrances made or suffered by me; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Thomas Richardson, his heirs and assigns, forever, against the lawful claims and demands of all persons claiming by, through, or under me, but against none other.

In witness whereof, we, the said Cyrus Alger, and Mary Otis, wife of said Cyrus, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals, this tenth day of February, in the year of our Lord eighteen hundred and forty-eight.

Signed, sealed, and delivered in presence of—(the word "wharf" being first interlined, and the word "equity" being first erased on first page)

H. MONTGOMERY,
SAM'L B. DEAN.

CYRUS ALGER, and a seal.
MARY OTIS ALGER, and a seal.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

February 16th, 1848.—Then personally appeared the within named Cyrus Alger, and acknowledged the within instrument to be his free act and deed.

Before me— H. MONTGOMERY,
Justice of the peace.

Boston, March 31, 1851.—Received and entered with Suffolk deeds, lib. 618, fol. 219.

Per HENRY ALLINE, *Reg.*

No. 15.—*Lease.*

This indenture, made this first day of April, in the year of our Lord one thousand eight hundred and forty-eight, by and between Thomas Richardson, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, gentleman, of the first part, and David R. Lecraw, of Marblehead, in the county of Essex, mariner, and William B. Perkins, of said Boston, coal merchant, of the second part, witnesseth: That the said Richardson doth hereby lease, demise, and let unto the said lessees all that wharf estate situate on Broad street, near the foot of Summer street, in said Boston, known as the "Bull wharf," with the buildings thereon standing, save and except however the short dock on the southerly side of said wharf, adjacent to the Summer street wharf, the sole and exclusive use of which said last mentioned short dock is reserved to Calvin Bullard; and save and except moreover the attic of the long building on the wharf hereby demised, which said attic, and convenient access thereto and therefrom, are hereby reserved for, and for the use of, said Richardson, the lessor, exclusively:

To hold the said premises, with the rights, easements, and appurtenances to the same belonging, for the term of three years, from and after the day of the date hereof, yielding and paying therefor the rent of twenty-two hundred dollars yearly, payable in quarterly payments of five hundred and fifty dollars each, on the first days of every July, October, January, and April during said term; said lessor having the right to demand of the said lessees their negotiable note for the rent before it accrues, for not more than six months' rent in advance at any time; it being understood that, if this lease is terminated by the lessor, as hereinafter provided, he shall refund to them, before their removal from the premises, all rent overpaid; said lessor agrees to remit one hundred dollars of the above reserved rent yearly, if, within one year from the day of the date hereof, a building for the deposit of coal shall be erected on the demised wharf near Broad street, which shall cost at least three hundred dollars. And the said lessees for themselves, their executors and administrators, do covenant and agree, to and with the said lessor, his heirs and assigns, that they will pay the said rent, in manner above stipulated, and that they will quit and deliver up the

premises to the lessor, his heirs and assigns, peaceably and quietly, at the end of the term, in as good order and condition (reasonable use and wearing thereof, and damage by fire or other casualties excepted) as the same now are or may be put into by the said lessor, or those having his estate in the premises; and that they, the said lessees, and those holding under them, will pay the rent as above stated, and also all the taxes and assessments whatsoever, whether in the nature of taxes now in being or not, which may be payable for or in respect of the said premises, or any part thereof, during the said term, and also the rent and taxes and assessments, as above stated, for such further time as they, the said lessees, or those claiming under them, may hold the premises; and that they will not make or suffer any waste thereof, nor lease, nor under-let, nor permit any other person or persons to occupy or improve the same; nor make, or suffer to be made, any alteration therein; nor assign this lease, but with the approbation of the lessor, or those having his estate in the premises thereto, in writing being first obtained; and that the lessor, or those having his estate in the premises, with their agents, at reasonable times, may enter the said premises, to view and make repairs and improvements; and in case the said rent shall be in arrear, or any of the covenants aforesaid to be observed on the part of the said lessees, or those holding under them, shall be broken, the said lessor, or those having his estate in the premises, whilst such neglect or default continues, may, without further notice or demand, enter upon the premises, and expel the lessees and those holding under them, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant:

Provided, however, that in case the premises, or any part thereof, shall, during said term, be destroyed or damaged by fire or other unavoidable casualty, so that the same shall be thereby rendered unfit for use and habitation, then, and in such case, the rent herein before reserved, or a just and proportional part thereof, according to the nature and extent of the injury sustained, shall be suspended or abated until the said premises shall have been put by the said lessor, or those having his estate in the premises, in proper condition for use and habitation; provided always, and these presents are upon this condition, anything above expressed to the contrary notwithstanding, that it shall be lawful for the lessor to determine and make void this lease, and resume possession of the demised premises, in any year of the term hereby created, on the last day of July in said year, having first given to said lessees in person, or left at their last and usual place of abode, on or before the first day of May in said year, notice in writing of his intention to determine it; and in case they shall remove their effects and abandon the premises on said last day of July, in the year of said termination, they shall receive from the lessor the sum of one thousand dollars, as liquidated damages sustained by reason of such removal and abandonment, and in addition thereto the actual cost and expense of said removal—said actual cost and expense, in case of any difference of opinion, to be determined by three arbitrators, to be mutually chosen

by the lessor and the lessees, but in no event to exceed seven hundred dollars; and said liquidated damages to be paid immediately after said removal and abandonment, and said cost and expense as soon thereafter as they can be determined. If the lessor should request the lessees to abandon the demised premises within thirty days after written notice to that effect given them, and if said lessees should see fit to comply with said request, then they, in addition to the liquidated damages and cost and expense above provided for, shall be discharged of all rent accruing within said thirty days. All the buildings and fixtures which have been or shall be erected on the demised premises by the lessees may be removed by them, if removed without essential injury to the premises, before the termination of this lease, whether said lease be determined by its own limitation or otherwise—save and except, however, the building for the deposit of coal above provided for, which shall not be removed at all; but if this lease be terminated by the lessor in the way herein provided, he shall repay the said lessees the difference between the cost of erecting said coal building, which in no event shall exceed three hundred dollars, and the sum which shall have been previously remitted on account of said coal building as above provided. The lessor reserves the right to extend the wharf hereby demised to the commissioners' line at any time he sees fit, and to have the exclusive use of the extended portion, and free liberty of access thereto and therefrom, by himself, servants, workmen, carts and carriages, at all times, without molestation or claim for damages by the lessees; it being understood that, for so much of the demised wharf as he shall use for means of access as aforesaid, he shall give said lessees an equal area of space or room on said extended portion.

Witness our hands and seals, the day and year first above mentioned.

TH. RICHARDSON,
DAVID R. LECRAW,
WM. B. PERKINS, and a seal.

Executed in presence of—
CALVIN BULLARD,
ALFRED CHENEY.

No. 16.—*Liberty to Robbins to fill up dock.*

At a meeting of the selectmen of the town of Boston, held September 15, 1802:

On the application of John D. Robbins for liberty to fill up the dock at the bottom of Summer street, Mr. Sturges, Mr. Tileston and Mr. Tilden, appointed a committee to consider whether it be expedient that the request of Mr. Robbins be complied with and upon what terms, or whether it should be done at the expense of the town.

At a meeting of the selectmen of the town of Boston, held January 12, 1803:

Mr. Derby Robins is authorized to build a head to the dock at the bottom of Summer street and to fill up the dock, he to be at the

whole expense thereof, and to lay a common sewer therein of the dimensions that may be agreeable *of* the committee.

A true copy.
Attest: S. F. McCLEARY,
City clerk.

No. 17.—*Record of petition of Thomas Richardson.*

City of Boston, in Board of Aldermen, May 2d, 1836.

Petition of Thomas Richardson, stating that the proprietors of estates at the bottom of Summer street are about to improve their land, which will render it necessary to have the common sewer extended.

Referred to the committee on sewers and drains.

City of Boston, in Board of Aldermen, May 9, 1836.

On the petition of Thomas Richardson, the committee on drains and sewers recommend that notice be given for all persons interested to appear before this board on Monday next, four o'clock, p. m., that the Mayor and Aldermen will take into consideration the expediency of extending the common sewer at the foot of Summer street, agreeably to the prayer of the said petition.

For the committee: J. B. McCLEARY.

Read, accepted, and ordered accordingly.

City of Boston, in Board of Mayor and Aldermen, May 16, 1836.

It appearing to this board that notice has been given on the petition of Thomas Richardson, agreeebly to the order passed at the last meeting of this board, and no person appearing to object, except William Parsons. It was thereupon

Ordered, That said sewer at the bottom of Summer street be extended as prayed for, and the expense thereof assessed upon those whose estates shall be benefitted thereby, according to law.

March 21, 1851.—I, the subscriber, do hereby certify that the foregoing documents marked are true copies from the records of the town and city of Boston.

S. F. McCLEARY, *City clerk.*

No. 18.—*June* 18, 1849. *Order of Mayor and Aldermen.*

City of Boston. An ordinance constituting the Board of Health for the city.

Be it ordained by the Mayor, Aldermen and Common Council of the city of Boston, in city council assembled, as follows:

The Mayor and Aldermen shall constitute the Board of Health of the city, and shall exercise all the powers and perform all the duties now vested in the city council as a Board of Health, with the right of carrying into execution such powers and duties, through the agency of

any persons whom they may select or in any manner which they may prescribe.

In Common Council, June 14, 1849: Passed, sent up for concurrence.

BENJAMIN SEAVER, *President*.

In Board of Mayor and Aldermen, June 18, 1849: Passed.

JOHN P. BIGELOW, *Mayor*.

A true copy.
Attest: S. F. McCLEARY, *City clerk*.

No. 19.—*City of Boston*.

In Board of Mayor and Aldermen, Tues., July 3, 1849.

Whereas, there are two indictments pending against the city of Boston for a public nuisance on the flats at the foot of Summer street in said city, which nuisance is said to be caused mainly by an ancient sewer which has its outlet upon the said flats; and whereas, great complaints of said nuisance have been made to this board by divers citizens; and whereas, due notice has been given to Thomas Richardson, and all persons interested, to appear and show cause, if any they had, why the said flats should not be filled up, and the said sewer extended to low water-mark, and such other means taken in the premises as should effectually prevent the said nuisance for the future; and at a meeting of this board on the twenty-fifth ultimo, the said Richardson did appear, and was heard in his own behalf; and whereas, this board have personally viewed the premises, and are satisfied that they are in a state of nuisance and are dangerous to the public health, and that the only effectual method of removing the said nuisance and effectually preventing the same in future is by extending the said drain. Therefore—

Ordered, That the common sewer at the foot of Summer street be extended five hundred feet over the land or flats belonging to the city in the direction of the channel, under the direction of the superintendent of sewers and drains.

A true copy.
Attest: S. F. McCLEARY, *City clerk*.

No. 20.—*City of Boston, Monday, July 30th*, 1849.

In Board of Mayor and Aldermen.

Ordered, That due notice be given to Thomas Richardson and all others interested, to remove an obstruction in Summer street near where the common sewer enters the dock, within ten days; and in default thereof, that the city marshal be instructed to remove the same.

SUFFOLK, *ss*.

City of Boston, July 30, 1849.

I have this day notified the within named Thomas Richardson, by

leaving him an attested copy of this notice at his last and usual place of abode; and on the thirty-first day of the same July, I notified William Perkins and Calvin Bullard, by delivering to each of them in hand an attested copy of this notice; and on the same day I notified Matthew Hayes, by leaving him an attested copy of this notice at his last and usual place of abode.

WILLIAM MUNROE, *Constable.*

Fees:

Three services - -	$ 90
Three travels - -	12
	$1 02
One service and travel -	34
	$1 36

A true copy.
Attest: S. F. McCLEARY, *City clerk.*

No. 21.—*City of Boston.*

In Board of Mayor and Aldermen, August 21, A. D. 1849.

Whereas, by an order of this board, passed on the third day of July last past, it was ordered that the common sewer at the foot of Summer street be extended five hundred feet over the land or flatts belonging to the city in the direction of the channel, under the direction of the superintendent of sewers and drains; and whereas, certain obstructions have been placed in that part of Summer street, as anciently described and laid out, lying between Broad street and the sea, which obstruction ought to be removed, to the end that the said drain may be properly laid, and that free access to the same may be had over a public way; and whereas, in the opinion of this board, after a personal inspection of the premises, and examination and due notice to all parties interested, the said way ought to be kept open from Broad street to the sea; and whereas, by an order of this board, passed on July thirtieth now last past, it was ordered that due notice be given to Thomas Richardson and all others interested, to remove all obstructions in Summer street near where the common sewer enters the dock, within ten days, and in default thereof, that the city marshal be instructed to remove the same; and whereas, it appears that due notice of the said order was given according to the terms thereof: Now, therefore, be it ordered, that the city marshal cause said obstructions to be removed forthwith.

A true copy.
Attest: S. F. McCLEARY, *City clerk.*

It was admitted that Perkins died November 19th, 1849.

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The plaintiff then produced the following witnesses, who, after having been duly cautioned and sworn in court, testified as follows:

Daniel Prescott. I have lived in Boston forty years. I have been in the wood and coal business thirty years, and wharf owner in Liverpool; wharf at the foot of Pearl street. I know the Bull wharf. I have known it forty years. The Price wharf has been built lately; it was not much of a wharf. I knew of a drain put into the dock. It was built in July and August, 1849. I saw it when building, and when done. The effect of it to Bull wharf was to comparatively spoil it for a wharf. There were no means to get to it with vessels after it was built. Vessels could not get to it at all, after the drain was built. Thomas Richardson built an extension, at which a vessel could lay at the end. No man acquainted with business would hire it. I remember when Cheney & Perkins were in business there; they carried on wood and coal business, but not as much as Lecraw. I knew Lecraw bought out Cheney, and went into business with Perkins, Cheney's partner. After Lecraw & Perkins went into company the business increased; there was more stock, as I noticed when there. Perkins was my son-in-law. Captain Lecraw employed to take charge of his business in April 20, 1850, whilst he was foreman of the jury; and I stayed longer with him; in the neighborhood of a year and a half. I knew his customers and about his business before the drain was built. I could not say how much wood they took in, but should think they had 1,500 cords, perhaps more for a season, a year. The season begins in April, March and May. Lecraw took it in *in* summer; after the drain was put there he labored under disadvantage, as his vessels would not come again because it was a bad place to unload, and labored under disadvantages in buying stock. The vessels had to unload on the opposite side of the drain, on a platform. He had no other means. He had a bridge to build by placing timber on piles, and then lumber from 30 to 35 feet and joist across this, and plank it. The platform to wheel on was sixteen inches higher than the wharf, and then another platform to get on to the wharf. The wharf was high enough in all conscience. It made more wheeling, and employed double the number of men to do not so much business. Captain Lecraw took in, on an average, from 2,500 to 3,000 tons of hard coal per season before the drain. After the drain was built, we could not unload as much per day by two-thirds. Emerson and he had to have five to six men where two would do before. The extra cost for coal was from 14 to 15 cents per ton. Before the drain was built, one and two men would do; afterwards four to five men were necessary. Before the drain was put there, we only had to wheel across the cartway to reach the coal shed, say twelve to fifteen feet, and never more. After the drain was put there, had to wheel it to the coal shed, which was 200 feet off. We had to build a bridge from the wharf across to the other side of the drain, and take the coal over the bridge. There was considerable waste in wheeling it. We had to get out of dock what we received. Men would not work there because it was so dangerous. Never knew any men badly hurt.

Ordinary wheelers could not work there. Before the drain was put there, could put coal right in shed. Afterwards had to land it down town and cart it up. Before the drain can't tell how much soft coal we had; after the drain we used to have 200 chaldrons soft coal, perhaps 300, over 200, which cost him under new system 25 or 50 cents more per chaldron. Soft coal wastes, and their expenses were from 3 per cent. to 4 per cent. per chaldron in all. There were two bridges to wheel coal on, and a bridge to move wood. The bridges cost from four to five hundred dollars, and then there were plank the whole length of the coal shed to wheel on. It was about one man's work to keep them in repair and tend the plank in the coal shed, there being turn-outs for wheelers.

Before this thing occurred he had four berths besides the end, five berths. Not a handier wharf for wood and coal business, and good a location as in the city, before the drain; an old wharf and popular stand, forty years ago. After drain erected, not any chance to get a vessel at the wharf or get any wharfage.

Captain Lecraw had to pay wharfage at other wharves, and several freights. Captain Lecraw had to pay Richardson 300 dollars per annum for a privilege in Emerson's dock, the privilege of hauling vessels in there—a dock privilege there.

He labored under great disadvantage in coal for the first year the drain was put there, because he had to limit himself as to width of vessels. He could not put all vessels in. He lost by coal rising, and he had to pay more profit and buy coal in the spring of the year; and then I had to limit for draught of water, and so they put me off, and so Captain Lecraw had to pay $1 00 more per ton in rise of coal, and 25 to 50 cents more freight. Mr. Perkins & Cheney used to have vessels in winter time hauled in there for dockage; they would stay there all winter. They used to have vessels laying there, and haul up oyster vessels, and heard of no objection, but supposed the dock belonged to the wharves.

I am now in wood and coal business. I resided in north part of the cty in 1847, 1¼ of mile from their place of business. I never examined the books of the concern; never measured amount of coal and wood. I think there was more coal and wood there after Lecraw came than before. I estimate the amount from eye at 1,500 cords of wood in a season, not all at one time. The triangle was put on the wharf in November, 1851.

He purchased wood in spring, summer and fall, not much in winter. In ordinary cargoes of coal are 200 tons of coal. Some cargoes Lecraw had were 200, and some less, of coal. Can discharge 150—180 tons per day. He did not get out more than 75 tons per day. It would take three days in our business. It would take five men where would take two men. Used to have two men before, and four and five men after. Paid them from 9 shillings to two dollars. Had more trouble to get wheelers; they would fall off.

Coal houses were on north side of the wharf, and could haul vessels

right opposite to them. This was opposite the big dock. There was but one berth for Bullard, and three in Emerson's dock. Mr. Lecraw had two berths only in Emerson's dock; the one above was not wide enough for a coal vessel. Generally, coal rises in winter. Was a rise in coal in 1850 and 1851.

Elisha Wiswall. I live in Boston, and my place of business is near Lecraw. I am in the wood and coal business, and have been in it 12 or 14 years. I know the premises of the plaintiff, and have seen them since the erection of the drain. It has ruined the dock privilege for that purpose. Captain Lecraw had stock on hand, some years 1,000 or 1,500 cords of wood per annum. Hard coal some 3,000 tons; soft coal, can't say, but perhaps 100 to 200 chaldrons.

Wood per cord, verifies paper as before. Coal feet further to wheel. Wood to wheel. There is an increased expense in buying wood. Captain came in with wood for immediate discharge, and he won't sell to Lecraw because he can't discharge immediately. Per cord increased expense in wood 75 to 80 cents.

Hard coal, in moving coal, 10 to 15 cents per ton more. Soft coal extra expense; could not say; waste to it, breaking up, but trifle. Teaming worth 25 to 50 cents per chaldron, landed on some other wharf. Wharfage per chaldron, could not say—from 12 to 25 cents per chaldron.

I can well remember great many vessels came in there and take in cargoes and have goods sent into them. After the drain they could not get in. Restrictions as to depth of water and width of vessel is under disadvantage in the coal business.

My estimate of the amount of wood and coal is judged by appearance. Never knew any such case happening to Lecraw of increase of price of wood.

Robert Robbins. I have no business now, but was a wood and coal dealer. Am 68 years old. Know the premises since 1810. At that time the dock put to use of coasting vessels sailing up and down, and laying on flats. Wharf known as Vose or Bull wharf. The dock was used for coasting vessels. Never heard of any objection to laying vessels there. Know nothing of stock of Lecraw. Knew there were four good berths, upper one a shoal berth, which would do for coasters. No berths there now, except what Richardson has pieced on. Of wood, the increased price per cord is 80 cents, in my opinion; coal per ton, from 12 to 15 cents; soft coal 50 cents per chaldron in all, little enough.

I landed on dock when first came to Boston; hauled up side of the wharf. The upper wharf was a wreck, a mere shell of a wharf, and Bull wharf not half as long as now. Wide space open then, and dock extended up to Broad street—all filled in since.

John Emerson. Am wood and coal dealer for 12 years in Summer street. Familiar with the premises. Spoilt the wharf for business uses. Lecraw's wood extra cut, 75 cents. Hard coal 12 to 15 cents per ton. Soft coal 50 cents per chaldron, low enough. General disadvantages there—they are great in ordering coal and in unloading coal, which have to wait. Lecraw & Perkins traded some in bark; can't

say as to extent of it. I hired in same dock. No opposition to using wharf for wharfage purposes. Plaintiff had one berth there in our dock. Can't tell how much it cost me more, some 25 cents per cord for wood, to come in there after the drain. When I speak of this dock and for wharfage purposes, I speak of it only since 1844. Increased cost of coal per ton after drain built for freight was 25 cents. We could easily obtain our supply.

Henry Curtis. I am a wood and coal dealer for 15 years. Have heard the evidence of the other witnesses. Extra cost of wood 75 cents. Hard coal extra 14 or 15 cents per ton. Soft coal extra, waste and teams, 50 cents per chaldron. My principal business has been in small coasting vessels. Before the drain was laid, Lecraw's was one of the best wharves in Boston; afterwards could not use it at all. Bargained to sell coal landed at the wharf, obliged to wait there to deliver cargo in company with others, &c. My vessel's the only vessels that went twice apiece, and coal vessels would not take freights to it at any rate; they would not go there for double price. Have known the dock since was a boy; am 50 years old. Known it 35 to 40 years; Short wharf on one side, and Bull wharf on the other side. The space was open to let vessels haul in and out. There were four good-sized berths there; annual value of each berth, to haul in and out, 500 dollars a year; couldn't tell. What Lecraw had to let might accommodate a good many.

Charles French. Am wood and coal dealer in Boston, near Lecraw, for 17 years. Have heard the other testimony. Wood, extra cost 75 cents per cord, sometimes less; hard coal, extra cost moving it, 15 cents; waste and teaming on soft coal, mere guess work; more tender, and wastes more than others, 75 cents per ton. I am on next wharf north. Would take and carry wood for Lecraw; would do it for about 2 shillings per cord. Would merely cart it round for that.

David Day. I reside in Gloucester; employ vessels in carrying wood to this and other wharves in Boston. Good wharf for the wood trade; vessel there at the time of driving the piles too wide to enter Lecraw's dock; ordered away and left, but would have left without. Nova Scotia vessels used to come there to take freight; adequate for them. Damariscotta vessels came there and stayed there both of them 1 or 2 days apiece. Seen vessels laying there in dockage all winter. Before drain the business of Lecraw had increased; seen great piles of wood and sheds full of coal, grindstones, bark. Lecraw had been master of vessels, and wharfage increased at that place; the wharf was a favorite wharf.

Wm. B. Tarleton. Am a police officer of the city. In July, 1849, was ordered down to these premises by Spurr; the marshal's order coming, as usual, from the mayor. Was ordered to keep vessels clear of the machine for driving spiles for a common sewer; orders were to request them to move, and if they didn't move, to move them. Gave notice to the occupants whom I saw. I removed a barque from the dock and requested another to move, one for Lecraw. I stood in the

barque and removed it from Price's wharf. She came in the way of spile driving. Capt., upon request, moved her. I think I refused to let in a vessel; did if it was too wide; helped to haul one in to the other dock. Other vessels came in at Lecraw's wharf. I moved three vessels, or had them moved at request. I waited two hours for a man to take in some barrels on the wharf; while work was going on, vessels came in on both sides of the wharf.

No wood and coal vessels came in at Lecraw's wharf after the drain, but small ones.

Calvin Bullard. Wood of Lecraw and hard coal not overstated by preceding witnesses.

Taking in his wood, &c., 30 feet of extra wheeling and platform; very frequently could land it opposite. Difference of labor in coal.

Timothy Leary. Live in Boston with Lecraw on his wharf. Been there five years, doing what he wanted. Before drain was put there, two wheelers unloaded coal; afterward we had five wheelers; they could not do as much work as two before; troublesome to get men to wheel on the bridges. I had to pay no more, but hard to get them. Didn't want to work because labor hard, and danger on wheeling plank; men have fallen off the wheeling plank, and Lecraw paid for a man in my place to make it right. Took from 5 to 8 o'clock to fix bridges. Coal would fall into the dock; considerable waste from that cause; wheelbarrow would fall off sometimes, and then coal would always.

Wm. Sprague. Am of the firm of Sprague, Soule & Co. Hired part of the wharf at the lower end of Lecraw. On rent before the drain at four hundred dollars. Drain did not improve it. Reduction was one hundred fifty dollars for whole time. Lecraw owned all the coal-sheds on the wharf.

The defendant, to prove the issue on its part, referred to No. 3, 4, 5, 7, 12, 17, 20, of the plaintiff's documents, and produced other documents to the court and jury, copies of which are hereto annexed, numbered from 1 to 14, inclusive.

Defendant's documents.

No. 1.—A court of assistants, holden at Charlestown, the 7th of September, 1630.

Present, (&c.)

It is ordered that Trimountain shall be called Boston; Mattapan, Dorchester; and the town upon Charles river, Waterton.

COMMONWEALTH OF MASSACHUSETTS,
Secretary's Office, Boston, March 26th, 1851.

I certify the foregoing to be a true copy from the original record, deposited with this department.

Witness the seal of the Commonwealth.

[L. S.]

AMASA WALKER,
Secretary of the Commonwealth.

No. 2.—Act of the general court, March 3d, 1635.—At the general court, holden at Newtown, March 3d, 1635.

Whereas particular towns have many things which concern only themselves, and the ordering of their own affairs, and disposing of businesses in their own town: It is therefore ordered, that the freemen of every town, or the major part of them, shall only have power to dispose of their own lands and woods, with all the privileges and appurtenances of the said town, to grant lotts and make such orders as may concern the well ordering of their own town, not repugnant to the lawes and orders here established by the general court, as also to lay mulcts and penalties for the breach of these orders, and to levy and distrain the same, not exceeding the sum of twenty shillings; also to chuse their own particular officers, as constables, surveyors for the highways, and the like. And because much business is like to ensue to the constables of severall Towns, by reason they are to make Distresses and gather fines, therefore that every town shall have two constables, where there is need, that so their office may not be a Burthen unto them, and they may attend more carefully upon the discharge of their office, for which they shall be lyable to give their accounts to this court when they shall be called thereunto.

COMMONWEALTH OF MASSACHUSETTS,
Secretary's Office, Boston, March 19th, 1851.

I certify the within to be a true copy from the records of the general court deposited with this department.

Witness the seal of the Commonwealth.

[L. S.]

AMASA WALKER,
Secretary of the Commonwealth.

No. 3.—*Baxter to Bull.*

To all Christian People to whome this present writing shall come, Nicholas Baxter, of Boston, in the Massachusetts Colony of New England, Mariner, sends greeting:

Know ye that I, the said Nicholas Baxter, for the mutuall love and affection which I beare towards John Bull, of the said Boston, ffeltmaker, and Mary his wife, the daughter of my wife Margarett, and theire children, and for their better advancement and preferment, as for divers other good causes and considerations me the said Nicholas Baxter thereunto especially moving, Have voluntarily and freely given, granted, enfeoffed and confirmed, and by these presents deo give, grant, enfeoffe and confirm unto the said John Bull, his heirs and assigns, a Parcell of land lying and being in Boston aforesaid, bounded with the sea east and by south, and is there eighty-one foote or thereabouts—with the land of Thomas Sheffell west and by south, and is there eighty-six foote or thereabouts; with the land of Mary Buttolph northwest, and is there eighty-one foote or thereabouts; and with the Highway east and by north, and is there seventy-five foote or thereabouts—To

1121.

Have, Hold, possess and enjoy the aforegranted premises and all and every part thereof, with theire appurtenances, priviledges and comodities thereof and thereunto belonging, unto the said John Bull, his heirs and assigns, to the onely proper use and behoofe of the said John Bull, his heires and assignes forever, in such lardge and ample sort, manner and form, as I, the said Nicholas Baxter, may grant, convey and assure the same. And I, the said Nicholas Baxter, doe hereby covenant and grant for me and my heires, that the aforegranted premises, with all and every the appurtenances and priviledges thereof as aforesaid, unto the said John Bull, his heires and assigns, against me and my Heires I shall and will warrant and forever defend by the presents.

In witness whereof I, the said Nicholas Baxter, have hereunto put my hand and seale, the twelfth day of December, in the year of our Lord one thousand six hundred sixty and eight, Annog Regni Regis Caroli Secundi, XXI.

NICHOLAS BAXTER, & a seale appendant.

Endorsed: This within written was signed, sealed and delivered, and the words (have) interlined before sealing, and the said Bull long since in possession, in presence of—

THEODOR ATKINSON,
JOHN ATKINSON.

Jla Attest: pr. ROBERT HOWARD, *Not. Publ.*

Bee it knowne unto all men, that I, Margarett, the wife of the within named Nicholas Baxter, doe by these presents resigne up all my right of thirds in the within specified land given by my said husband unto my son-in-law, John Bull.

In witness whereof I have subscribed my name, the day and yeare within written.

The marke of MARGARETT M. B. BAXTER.

Test: ROBERT HOWARD, *Not. Publ.*

Nicholas Baxter and Margarett his wife acknowledged this instrument of writing to bee theire act and deed, the 12th of December, 1668, before me,

JOHN LEVERETT, *Assistant.*

Recorded and compared, ffeb'y 14th, 1672.

Pr. ISAAC ADDINGTON, *Record'r.*

A true copy from the records of deeds for the county of Suffolk—Lib. 8, fol. 66.

Attest: HENRY ALLINE, *Reg'r.*

No. 4.—*Nicholas Baxter's will.*

In the name and fear of God, Amen. I, Nicholas Baxter, of Boston, being now arrived to a great age; through the goodness of God,

for which I praise His holy name, and for all other, His manifold mercies to me vouchsafed, through Jesus Christ, my blessed and only Saviour, for whose merits I have confidence to enjoy eternal life, and being at this present of a sound understanding, do make my last will and testament as followeth:

First, I will that my body be decently committed to the earth by my executrix hereafter named.

Next, I will and bequeath unto my deare and loving daughter, Mary Swett, my dwelling-house and land lying and being situate in Boston, with all my canon rights, priviledges and appurtenances there belonging or any waies appertaining, to her, my said daughter, her heirs, executors, or assigns forever, excepting that piece or parcel of land lying in my lot, which I gave to my son-in-law, John Bull, of about eighty-one foot in breadth and in length eighty-six foot on the southerly side, and on the other side about seventy-five foot, as by a deed of gift under my hand and seale, bearing date the twelfth of December, sixty and eight, may more fully appeare; which I still reserve and maintain to him, and his heirs and assigns forever; and as for the end of my lot next to the sea and on that side of the way, both flatts and other land, my will is that my son-in-law, John Bull, shall have and enjoy a part thereof proportionable to the land I have given him, for the landing of any goods from the sea, and the rest to belong to my house and land given to my daughter as aforesaid, and her successors forever.

And as for my household goods or implements for housekeeping, my will is that my son-in-law, John Bull, shall have the one-half of them, or the value of the one-half of them, delivered to him, which I adde as a token of my love to him and his wife, to what I have given him before; and as for the rest of my estate, whether debts, moneys, or whatever it be, I do freely and absolutely give and bequeath the same to my dear and loving daughter, Mary Swett.

And I do appoint my daughter, Mary Swett, to be my executrix to this my last will and testament, and heir of all that I have, excepting the one-halfe of my household goods as aforesaid; and that this is my will, and last will and testament, I have hereunto set my hand and seal, this fifth day of April, anno Domini one thousand six hundred and eighty.

NICHOLAS BAXTER, & a seal.

In the presence of—
ROGER HALLET,
JOSEPH HANES.

BOSTON, *April* 29, 1692.

Mary Swett, the executrixw ithin named, presented this will for probate. Joseph Homes, one of the subscribing witnesses, appearing before the county court, sitting in Boston, made oath that he was present and did see Nicholas Baxter signe and seale, and heard him declare this instrument to be his last will and testament, and that when he so did

he was of a disposing mind, to his understanding, and that Roger Hallet was present and subscribed at same time as a witness.

Attest: JOSEPH WEBB, *Cler.*

Ex'd. JOSEPH WEBB, *Cler.*

A true copy of records.

Attest: H. M. WILLIS, *Reg'r.*

No. 5.—*Josias alias Wampatuck to Cooke et al.*

To all to whom these presents shall come, I, Charles Josias, alias Josias Wampatuck, son and heir of Josias Wampatuck, late sachem of the Indians inhabiting the Massachusetts, in New England, and grandson of Chickatabut, the former sachem, send greeting:

Forasmuch as I am informed and well assured from several ancient Indians, as well those of my council as others, that upon the first coming of the English to set down and settle in these parts of New England, my above named grandfather, Chickatabut, the chief sachem, by and with the advice of his council, for encouragement thereof, upon divers good causes and considerations him thereunto moving, did give, grant, sell, alienate, convey, and confirm unto the English planters and settlers respectively, and to their several and respective heirs and assigns forever, all that neck, tract, or parcel of land, scituate, lying and being within the Massachusetts colony, in order to their settling and building a town there, now known by the name of Boston, as it is invironed and compassed by the sea or salt water, on the northerly, easterly and westerly sides, and by the line of the town of Roxbury on the southerly side, with all the rivers, harbours, bays, creeks, coves, flats, and appur'ces whatsoever thereunto belonging, as also several other outlands belonging to the said town on the southerly and easterly sides of Charles river, and the island called Deer Island, lying about two leagues easterly from the said town of Boston, between Pudding Point Gut and the Broad Sound so called, s'd island containing one hundred and sixty or two hundred acres of land, more or less, with the privilidges and appurtenances thereunto belonging; which said neck and lands have since been distributed and granted out among themselves into particular alotments and other conveniences, and given, alienated, and transferred to and from one another, having been peaceably and quietly possessed, used, occupied and enjoyed, for the space of about fifty and five years last past, by the said first grantees, their heirs, successours and assigns, and now stand quietly and peaceably possessed thereof at this day. Wherefore I, the said Charles Josias, alias Josias Wampatuck, sachem, and William Hahaton, Robert Momentange, and Ahawton, senior, my counsellors, (by and with the allowance and advice of William Stoughton & Joseph Dudley, esq'rs, my prochain amys and guardians,) as well for the considerations and reasons above mentioned, as for and in consideration of a valuable sum of money to me and them in hand well and truly paid by Elisha Cooke, Elisha Hutchinson, esq'rs, Mess. Samuel Shrimpton, John Joyliffe,

Simon Lynde, John Saffin, Edward Willis, Daniel Turell, sen'r, Henry Allen, John Fayerweather, Timothy Prout, sen'r, and Theophilus Frarey, of Boston aforesaid, for and in the behalf of themselves and the rest of the proprietated inhabitants of the town of Boston, aboves'd, the receipt of which said sum of money, as full and lawful consideration, we do hereby acknowledge to have received, and thereof, and of every part and parcel thereof, do fully acquit and discharge the said Elisha Cooke, Elisha Hutchinson, Samuel Shrimpton, John Joyliffe, Simon Lynde, John Saffyn, Edward Willis, Daniel Turell, sen'r, Henry Allen, John Fayerweather, Timothy Prout, sen'r, and Theophilus Frarey, and every of them, their and every of their heirs, executors, adm'rs, and assigns forever, by these presents have, and hereby doe, for the further confirmation and ratification of the said gift, grant, bargain, or sale of the said grand sachem, Chickatabut, fully, freely, and willingly approve, ratify, establish, enfeoff, and confirm the same, and do also fully and absolutely remise, release, and forever quit claim unto the said Elisha Cooke, Elisha Hutchinson, Samuel Shrimpton, John Joyliff, Simon Lynde, John Saffin, Edward Willis, Daniel Turell, sen'r, Henry Allen, John Fayerweather, Timothy Prout, sen'r, and Theophilus Frarey, their heirs and assigns, respectively forever, so far as their own several and respective rights and interests are or may be; and further for and in behalf of the rest of the proprietated inhabitants of said town of Boston and precincts thereof, severally and their several and respective heirs and assigns forever, according to the several interest, rights, title and propriety, which each person respectively hath right unto, and standeth now seised and possessed of all the afores'd neck, and tract of land now called and known by the name of the town of Boston, and all other lands whatsoever within the said township and precincts thereof, easterly and southerly of and from Charles river, with all and every the housing, buildings, and improvements thereupon, and on every part and parcel thereof, and the island afores'd, called Deer Island, and the buildings thereon, with all harbours, streams, coves, flatts, waters, rivers, immunitys, rights, benefits, advantages, libertys, privilidges, hereditam'ts, and appurc's whatsoever, to all and every the aforementioned premises belonging, or in any manner or wise appertaining, or therewith heretofore or now used, occupied or enjoyed; also all the estate, right, title, interest, property, claim, and demand of me, the said Charles Josias, alias Wampatuck, and of all and every of my beforenamed counsellors, of, in, and to the same, and every part, parcel, or member thereof.

To have and to hold all and singular the above mentioned lands, premises, and appur'ces, and every part and parcel thereof, unto them, the said Elisha Cooke, Elisha Hutchinson, Samuel Shrimpton, John Joyliffe, Simon Lynd, John Saffin, Edward Willis, Daniel Turell, senior, Henry Allen, John Fayerweather, Timothy Prout, senior, and Theophilus Frarey, their heirs and assigns, respectively, forever, for and in behalf of themselves, so far as their own several and respective

rights are or may be therein. And further, for and in behalf of the several and respective proprietated inhabitants of the said town and precincts thereof, their several and respective heirs and assigns forever, according to the interest, title, and propriety which each person hath, or may have, just right unto, and standeth now seised and possessed of, and to their only proper use, benefit, and behoof forever, freely, peaceably, and quietly, without any manner of reclaim, challenge, or contradiction of me, the s'd Charles Josias, alias Wampatuck, and my above named counsellors, or either or any of us, our, or either or any of our heirs, executors, admin'rs, or assigns, and without any accompt, reckoning, answer, sum or sums of money in time to come to be made, yielded, paid, or done, so that neither I, the said Charles Josias, alias Wampatuck, my counsellors, our or either of our heirs, executors, nor any others, by, from, or under me, us, or them, or any of them, shall or will, by any ways or means hereafter, have, ask, claim, challenge, or demand any estate, right, title, or interest of, in, or to the premises, or any part or parcel thereof; but are, and shall be, utterly excluded and forever debarred from the same, by virtue of these presents. And I, the said Charles Josias, alias Wampatuck, and counsellors afores'd, for us and every of us, our and every of our heirs, exe'trs, adm'rs, and successors, respectively, do hereby covenant, promise, grant, and oblige unto the aforenamed grantees, their heirs, exe'rs, adm'rs, and assigns, by these presents to warrant, maintain, and defend the aforementioned premises, and all and every part and parcel thereof, unto them, the said grantees, their heirs and assigns forever, as aforesaid, for and in behalf of themselves and others, the proprietated inhabitants, according to their respective rights and interests, against all and every person and persons whomsoever, lawfully claiming or demanding the same, or any part or parcel thereof; and at any time or times hereafter, upon demand, to give and pass more full and ample release, confirmation, and assurance of all and every the s'd premises unto the said grantees, their heirs and assigns, to the uses afores'd, and to doe and perform any other act or acts, device or devices, in the law necessary or requisite thereunto, as in law or equity can, or may be, devised, advised, or required.

In witness whereof I, the said Charles Josias, alias Wampatuck, William Hahaton, Robert Momentange, and Ahawton, sen'r, my counsellors, have hereunto set our hands and seals, the nineteenth day of March, anno Domini one thousand six hundred eighty and four, (1684;) Annoq R. R. Caroli Secundi Angliæ, &c., XXXVII.

CHARLES JOSIAS, A Signum and a seal.
AHAWTON, sen'r, III., Signum and a seal.
WILLIAM HAHATON, And a seal.
ROBERT 8 MOMENTANG,
His mark and a seal.

Signed, sealed, and delivered in presence of us—
WILLIAM WILLIAMS,
E. LYDE.

Charles Josias and William Ahawton, jun'r, in behalf of himself and his father Ahawton, Indians, acknowledged the abovesaid writing to be their voluntary act and deed, March 19th, 1684|5.

Coram: JAMES RUSSELL, *Assistant.*

We, underwritten prochain amys and guardians to Charles Josias, sachem of the Massachusetts, do consent and approve of the aboves'd confirmation of title and release of claim.

WILLIAM STOUGHTON,
JOSEPH DUDLEY.

David, son and heir of Sagamore George, and in his right, having some claim to Deer Island, doth hereby, for just consideration, relinquish his right to the towne of Boston, of all his right and claim thereto, and consents to the abovesaid deed of sale. As witness his hand and seal. D———.

In presence of us—
WM. WILLIAMS,
BENJAMIN DOWSE.

February 1st, 1708. Received and accordingly entered and examined.

Per ADDINGTON DAVENPORT, *Register.*

A true copy from the records of deeds for the county of Suffolk, Lib. 24, fol. 101.

Attest: HENRY ALLINE, *Register.*

No. 6.—Deposition Odlin, &c.

The deposition of John Odlin, aged about eighty-two years, Robert Walker, aged about seventy-eight years, Francis Hudson, aged about sixty-six years, and William Lytherland, aged about seventy-six years.

The deponents being ancient dwellers and inhabitants of the town of Boston, in New Engl'd, from the time of the first planting and settling thereof, and continuing so at this day, do jointly testify and depose, that in or about the year of our Lord one thousand six hundred thirty and four, the then present inhabitants of said town of Boston, (of whom the honorable John Winthrop, esq., governor of the colony, was chief,) did treat and agree with Mr. William Blackstone for the purchase of his estate and right in any lands lying within the said neck of land called Boston, and for said purchase agreed that every householder should pay six shillings, which was accordingly collected, none paying less, some considerably more than six shillings, and the said sum collected was delivered and paid to Mr. Blackstone to his full content and satisfaction. In consideration whereof he sold unto the then inhabitants of s'd town, and their heirs and assigns forever, his whole right and interest in all and every of the lands lying within said neck, reserving only unto himself about six acres of land on the point commonly called Blackstone's point, on part whereof his then dwelling-house stood,

after which purchase the town laid out a place for a training field, which ever since and now is used for that purpose and for the feeding of cattle.

Robert Walker and William Lytherland further testify, that Mr. Blackstone bought a stock of cows with the money he received as above, and removed and dwelt near Providence, where he lived till the day of his death.

Boston, the 10th of June, 1684, then personally appeared John Odlin, Robert Walker, Francis Judson, and William Lytherland, the four deponents above named, and made oath to this deposition, according to their respective testimony.

Before us, S. BRADSTREET, *Governor.*
SAM'L SEWALL, *Assistant.*

February the 8th, 1708. Received and accordingly entered and examined.

Per ADDINGTON DAVENPORT, *Register.*

A true copy from the records of deeds for the county of Suffolk, Liber 24, folio 106.

Attest: HENRY ALLINE, *Register.*

No. 7.—*Extracts from selectmen's records.*

[1.] At a meeting of the selectmen of the town of Boston, Sep'r 15, 1710:

Liberty is granted to Mr. Thomas Barrister and Comp'y to digg in the highway in Summer street, for the lying a draine or com'on shore there, provided they lay the s'd draine w'th brick or stone as the law directs, and that they lay the same not less than five foot deep under the surface of the ground where they digg in s'd street; and also that they effect the s'd work with speed, so as to obstructe the way as little as may be.

[2.] Anno 1718, Sept. 23:

Liberty is granted to James Reneman to digg open the highway in Su'mer street for ab't 29 feet in length, for the laying his cellar draine into the common shore there, provided he lay the same with brick or stone; and also that he forthwith repair and make good that part of ye s'd h'way w'h he shall so digg.

[3.] Anno 1728, April 29:

Liberty is granted to Major Vassall and the deacons of the old church to open the ground in Su'mer street, to lay a draine from his house and the churche's house there, down to the sea; they making good the ground and pavement they take up, to the satisfaction of the selectmen, and from time to time keeping it in repair.

[4.] Anno 1731, March 27:

Liberty is granted to Mr. Thomas Hill to take up the pavement and dig up the ground to cary his drain from his new cellar into the

com'on shore in Summer street; he making good the ground and pavement to the satisfaction of the selectmen, and from time to time keeping them in repair.

A true copy of documents numbered 1, 2, 3, 4.

Attest: S. F. McCLEARY, *City clerk.*

[5.] Anno 1732, March 23:

Liberty granted to Jon'a Armitage to take up the pavement and digg up the ground in Su'mer street, to cary his drain from his house in Sum'er street to the com'on shore there; he forthwith making good the ground and pavement to the satisfaction of the selectmen, and from time to time keeping them in repair.

[6.] Anno 1736, March 23:

Samuel Adams, esq'r, being present, desiring the selectmen to run the line in order to ascertain the breadth of Summer street at the lower end thereof, near the sign of the Bull; it was agreed that the selectmen would meet at the said place to-morrow morning at half an hour after eight o'clock, to attend that service.

A true copy of documents No. 5 and 6.

Attest: S. F. McCLEARY, *City clerk.*

[7.] Anno 1740, June 30:

On Friday last, the 27th of June current, the selectmen met at Bull's wharf, the lower end of Summer street, upon the desire of Mrs. Dyre, and run the line between the town and said Dyre, and staked out the highway, taking the measure from the well on the north side of the said highway, which is agreeable to the record thereof, made in the year 1683.

A true copy.

Attest: S. F. McCLEARY, *City clerk.*

No. 8.

At a meeting of the selectmen, July 8, 1802:

On the application of Mr. Morrel and Mr. Andrews, an order of notice was given to the proprietors of the common sewer in Newbury street and Summer street, to appear on or before Thursday next, to show cause why said common sewer should not be repaired, and the expense assessed generally on them, according to law.

At a meeting of the selectmen, May 3d, 1803:

Upon application from James Sullivan, esq., and others, for liberty to open and repair the common sewer on Summer street, ordered: That the proprietors and others, whose drains enter therein, be notified to appear on or before Wednesday, the 11th instant, to make their objections.

At a meeting of the selectmen, Feb'y 22d, 1804:

Return having been made by James Sullivan, esq., of the expense

of laying a new common sewer through Winter street, part of Newbury street, and through Summer street to the sea; the accounts whereof were duly examined by the selectmen, and by them allowed, they being informed at the same time that every person concerned in said common sewer had been duly named, according to law, and no objection having been entered to his proceeding, assessment is now made thereon by the selectmen, and order of payment is now made out, which is as follows:

Whereas a drain or common sewer in Newbury street, Winter and Summer street, has been laid conformable to the directions of the selectmen, the whole expense whereof, according to an account laid before and examined by the selectmen, amounted to $\$4,102\frac{14}{100}$; and as such expense is to be borne by such person or persons whose drains enter into said common sewer, and receive benefit thereby, in such proportion as shall be adjudged by the selectmen of said town, or the major part of them, who are empowe'd by law to apportion the same; the said James Sullivan, esq., having, agreeable to law, notified all the concerned before he had proceeded on the business, and no objection having been made thereto: therefore we, the subscribers, selectmen of said town of Boston, do hereby certify, that having considered of said expense, and by whom, and in what manner it ought to be paid, do adjudge that the same ought to be paid in the proportion following, and by the persons hereafter named, viz:

[Here follows a list of sixty-six names and assessments.]

And we do appoint Mr. George Sullivan to receive of the persons above named the sums affixed to their several names, and to give discharges therefor.

CHARLES BULFINCH,
DAVID TILDEN,
WM. PORTER,
JOHN TILESTON,
EBEN'R OLIVER,
JONATHAN HUNNEWELL,
JOHN MAY,
THOMAS WRIGHT,
Selectmen of Boston.

The foregoing are true copies from the records of the selectmen of the town of Boston.

Attest: SAM'L F. McCLEARY, jr., *City clerk.*

July 9, 1853.

At a meeting of the selectmen of the town of Boston, March 23, 1803:

On the application of Mr. Robert Robinson for liberty to put a fish-box at the bottom of Summer street, it is agreed that the request be granted; the box to be placed under the direction of ye selectmen comm'e, Mr. Tileston and Mr. Hunnewell.

[Rec. cli, D. T., 1853.]—9

At a meeting of the selectmen of the town of Boston, Sep'r 21, 1803:

Joseph Stevens is permitted to occupy the fish stall, at the bottom of Summer street, lately allowed to Robinson, who consents thereto. Mr. Tileston and Mr. Hunnewell were desired to direct the alterations in the stall which Mr. Stevens proposes to make.

At a meeting of the selectmen of the town of Boston, August 15, 1805:

Mr. Tileston appointed to see to the removing of the fish-box, at the foot of Summer street, over the water.

At a meeting of the selectmen of the town of Boston, Oct. 2nd, 1805:

Mr. Stevens applied for liberty to erect a fish-box over the water, at the bottom of Summer street, and presented a recommendation from a number of the neighborhood.

Mr. Tileston was desired to give directions for building the same as he should judge *judge* proper.

A true copy from the records of the town of Boston.

Attest: S. F. McCLEARY, *City clerk.*

No. 9.

Know all men by these presents, that I, Andrew Price, clerk, rector of Britwell Salome, Oxfordshire, in the Kingdom of Great Britain, in consideration of forty-five hundred dollars to me paid by Lauson Valentine, of Cambridge, in the State of Massachusetts, one of the United States of America, merchant, the receipt whereof I do hereby acknowledge, have sold, transferred, and conveyed, and by these presents do sell, transfer, and convey to the said Lauson Valentine, all my right, title, and interest, in all those certain real estates at the bottom of Summer street, in Boston, in the county of Suffolk, and State of Massachusetts aforesaid, described as follows, viz :

Beginning on Sea street, at the southeasterly corner of land of one Clements, now occupied by one Vose; thence running as the fence now stands on Sea street, in a straight line seventy-one feet; then turning and running northeasterly fifteen feet; then northwesterly on Summer street as the fence and front of a shop now stands, sixty-six feet, to land owned or occupied by William P. Whiting; then southerly by the land of the said William P. Whiting, eighty-one feet three inches, to the aforesaid land of said Clements; then by said land of said Clements, ninety feet ten inches, to the point of beginning, with all the rights and privileges to the same pertaining.

Also one other lot on the opposite side of said Sea street, bounded northerly on the south side of Summer street, and the town dock at the end thereof, extending from the corner of Summer street and Sea street, formed by the east side of Sea street, and by the south side of Summer street, to the channel; then bounded on the north by Sea

street from the aforesaid corner to the land of David W. Bradlee and Ann, his wife; then bounded southerly by said land of said David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the said channel, with all rights and privileges and appurtenances unto the same in any wise pertaining.

To have and to hold the same to him, the said Lauson Valentine, his heirs and assigns, forever; and I do hereby covenant with the said Valentine, that I have good right to sell and convey the premises in manner as aforesaid, and that I will warrant and defend the same against all persons who may lawfully claim and hold the same by, through, or under me, in any manner whatsoever.

In testimony whereof, I, the said Andrew Price, by George Sullivan, my attorney, have hereunto set my hand and seal, this twentieth day of July, A. D. eighteen hundred and twenty-one.

ANDREW PRICE,
By his attorney, GEO. SULLIVAN, and a seal.

Signed, sealed, and delivered in presence of—
CHARLES P. CURTIS,
GEORGE R. SULLIVAN.

SUFFOLK, *ss.*

July 23d, 1821. Then personally appeared the above named George Sullivan, before me, and acknowledged the above instrument to be the voluntary act and deed of the above described Andrew Price.

CHARLES P. CURTIS,
Justice of the peace.

Boston, July 25, 1821. Received and entered with Suffolk deeds, lib. 272, fol. 209.

Per HENRY ALLINE, *Register.*

No. 10.—*Osgood, guardian, to French.*

Know all men by these presents: whereas Isaac P. Osgood, guardian of Andrew P. Valentine, William P. Valentine, Edward L. Valentine, and Francis E. Valentine, minor children and heirs of Lauson Valentine, late of Boston, in the county of Suffolk, merchant, deceased intestate, by an order of the court of probate, begun and held at Boston, within the county of Suffolk, and Commonwealth of Massachusetts, on the 27th day of April last past, was licensed and empowered to sell and pass deeds to convey all the right, title, and interest of said minor children in and to the real estate of the said Lauson Valentine, at the time of his decease hereinafter described; and whereas he, the said I. P. Osgood, guardian as aforesaid, having given thirty days public notice of the intended sale, by printing a notification of the time and place of sale, three weeks successively in the newspaper called the Daily Columbian Centinel, printed at Boston, and by posting said

notification in said Boston, and in Charlestown, and Cambridge, in the county of Middlesex, thirty days before the sale; and having first taken the oath by law in such cases required, did on the fourth day of June, in the year eighteen hundred and thirty-five, pursuant to the license and notice aforesaid, sell by public auction to John French, of Boston aforesaid, merchant, the real estate of the said minor children hereinafter described, to him, for the sum of thirteen thousand twenty-five dollars, said sum being the highest bid at said sale, he being the highest bidder therefor.

Now, therefore, know ye, that I, the said I. P. Osgood, guardian as aforesaid, by virtue of the power and authority in me vested as aforesaid, and in consideration of the aforesaid sum of thirteen thousand twenty-five dollars, paid by the said John French, the receipt whereof I do hereby acknowledge, do hereby give, grant, sell, and convey, unto him, the said John French, the right, title, and interest of said minor children, in a certain lot of land, situate on Sea street in said Boston, bounded as follows, to wit:

Northerly on the south side of Summer street and the town dock at the end thereof, extending from the corner of Summer and Sea streets, formed by the east side of Sea street, and by the south side of Summer street, to the channel; then bounded on the north by Sea street from the aforesaid corner to the land of David W. Bradlee and Ann, his wife; then bounded southerly by said land of David W. Bradlee and Ann, his wife, in her right, and extending from Sea street out to the channel; and then bounded easterly by the said channel, or however otherwise the same is bounded. Also the right of dower in the aforesaid lot of land of Mary Ann Valentine, widow of said Lauson Valentine, released to me by deed of even date of these presents. Meaning hereby to convey all the right, title, and interest which said Lauson Valentine acquired by the deeds of Andrew Price and Elizabeth Price to him of the same lot of land.

To have and to hold the aforegranted premises, with all the privileges and appurtenances to the same belonging, to him, the said John French, his heirs and assigns, to his and their use and behoof, forever. And I, the said I. P. Osgood, guardian as aforesaid, for myself and for my heirs, executors, and administrators, do hereby covenant with the said John French, his heirs and assigns, that in pursuance of the license aforesaid, I gave thirty days public notice of the said intended sale, by posting and printing the same as aforesaid, and that I took the oath by law required previous to said sale.

In witness whereof, I, the said I. P. Osgood, guardian as aforesaid, have hereunto set my hand and seal, this fifth day of June, in the year of our Lord one thousand eight hundred and thirty-five.

ISAAC P. OSGOOD, and a seal.
Guardian of the heirs of L. Valentine.

Signed, sealed, and delivered in presence of—
EDWARD BLAKE.

SUFFOLK, *ss.*

June 10, 1835. Personally appeared the above named I. P. Osgood, acknowledged this instrument to be his free act and deed.

Before me, EDWARD BLAKE,
Justice of the peace.

Boston, June 15, 1835. Received and entered with Suffolk deeds, lib. 392, fol. 84.

By HENRY ALLINE, *Register.*

No. 11.—*Richardson to South Boston Iron Company.*

Know all men by these presents, that I, Thomas Richardson, of Boston, in Commonwealth of Massachusetts, merchant, for and consideration of nineteen thousand dollars, paid by the South Boston Iron Company, a corporation established by the laws of said Commonwealth, the receipt whereof I do hereby acknowledge, have given, granted, bargained, sold, and conveyed, and do hereby give, grant, bargain, sell, and convey, unto the said South Boston Iron Company, their successors and assigns, forever, all my right, title, interest, and claim, in and to a certain wharf estate and flats heretofore conveyed by Isaac P. Osgood, guardian to John French, by deed bearing date of the fifth day of June, A. D. eighteen hundred and thirty-five, and recorded in Suffolk registry of deeds, lib. 392, fol. 84, and described as follows, a certain lot of land, situated on Sea street, in said Boston, and bounded as follows, to wit:

Northerly on the south side of Summer street and the town dock, at the end thereof, extending from the corner of Summer and Sea street, formed by the east side of Sea street, and by the south side of Summer street to the channel; then bounded on the north by Sea street from the aforesaid corner to the land of David W. Bradlee and his wife; then bounded southerly by land of said Bradlee and his wife in her right, and extending from Sea street out to the channel; and then bounded easterly by the channel, or however otherwise the same is bounded.

Also all my right, title, interest, and claim in and to a certain other wharf and flats, conveyed by deed of J. D. Robbins to John French, dated 29th July, A. D. 1835, and recorded in Suffolk registry, lib. 394, fol. 73, and described as follows:

A certain wharf and flats, lying at the foot of Summer street, in said Boston, commonly called Bull's wharf, and bounded westerly or northwesterly on Broad street, there measuring sixty-two feet three inches or thereabouts; northerly or northeasterly, on land formerly belonging to Peleg Tolman, there measuring six hundred and fifty-three feet, more or less; easterly or southeasterly, on low water-mark, there measuring fifty-two feet or thereabouts; southerly or southwesterly of the town way or dock, there measuring six hundred and sixty feet, more or less, or however otherwise the same may be bounded and described, with

all the rights, interests, privileges, and appurtenances to the same belonging.

To have and to hold the aforegranted premises to the said South Boston Iron Company, their successors and assigns, to their use and behoof, forever. And I do hereby for myself, my heirs, executors, and administrators, covenant to and with the said South Boston Iron Company, their successors and assigns, that I am lawfully seised in fee of the aforegranted premises; that they are free from all encumbrances; that I have good right to sell and convey the same to the said South Boston Iron Company; and that I and my heirs, executors, and administrators, shall and will warrant and defend the same premises to the said company, their successors and assigns, forever, against the lawful claims and demands of all persons: Provided nevertheless, that if the said Thomas Richardson, his heirs, executors, administrators, or assigns, pay to the said company, or cause to be paid to them, their successors or assigns, the sum of nineteen thousand dollars, in two years, and interest annually, as expressed in a note signed by Thomas N. French, and endorsed by said Richardson for said sum, then this deed, as also a certain note bearing even date with these presents, given by the said French, and endorsed by said Richardson to the said company, promising to pay the same sum to said company at the time aforesaid, shall both be void and of no effect, otherwise shall remain in full force and virtue.

In witness whereof, I, the said Thomas Richardson, have hereunto set my hand and seal, this eighteenth day of May, in the year of our Lord one thousand eight hundred and thirty-seven.

TH. RICHARDSON, and a seal.

Signed, sealed, and delivered in presence of us—
HENRY H. FULLER,
CALEB A. BUCKINGHAM.

SUFFOLK, *ss.*

18*th May*, 1837.

Personally appeared the above named Thomas Richardson, and acknowledged the above instrument by him signed and sealed to be his free act and deed.

Before me, HENRY H. FULLER,
Justice of the peace.

May 18, 1837, at 50 minutes past six o'clock, p. m., received, entered, and examined.

Per HENRY ALLINE, *Reg.*

A true copy from the records of deeds for the county of Suffolk, lib. 420, fol. 125.

Attest: HENRY ALLINE, *Reg.*

No. 12.—*Petition of P. C. Brooks et al. to relay drain.*

BOSTON, *April* 21, 1840.

To the Hon. the MAYOR of the city of Boston:

The subscribers had the honor, a few days ago, of presenting a request to have the paving renewed in a part of Summer street. Since that time they have been informed that probably the drain, or common sewer, needs also to be relaid, and that if done at the same time with the paving, it would be attended with considerably less expense than if done in a separate job. Should it be found necessary to relay the drain, the subscribers request it may now be done, and they are willing to be taxed, individually, as in like cases for a portion of the cost.

With great respect,

P. C. BROOKS,
R'D D. TUCKER,
J. W. PAIGE,
B. HUNTING,
DEMING JARVES,
JAMES CARTER.

In the Board of Aldermen, June 28, 1841.

The com'ee on sewers, to whom the within petition (being taken from the files) was referred, recommend the passage of the following order:

For the com'ee: THO. WETMORE.

Ordered, That the superintendent of common sewers cause the common sewer in Summer street to be relaid, and return the expense and estimate of the same to this board according to law.

No. 13.—*Record indictment—City of Boston.*

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, to wit:

At the municipal court of the city of Boston, begun and holden at said Boston, within and for the county of Suffolk, on the first Monday of December, in the year of our Lord one thousand eight hundred and forty-eight:

The jurors for the Commonwealth of Massachusetts on their oath present: That the inhabitants of the city of Boston, in their corporate capacity of Boston aforesaid, in said county of Suffolk, on the first day of December, in the year of our Lord one thousand eight hundred and forty-eight, at Boston aforesaid, in said county, a certain common and public nuisance, in and upon the land of the said inhabitants of said city, situated at the southerly part of said Boston, at the foot of Summer street, near to certain public passage ways, highways, and streets, to wit, certain passage ways, highways, and streets, called and known by the name of Summer street, Sea street, New Broad street, there

situate, and near to the wharves of several citizens there situate, the names of the owners of said wharves being as yet not known to said jurors, did erect, cause, create, suffer, and maintain, by then and there causing and suffering great quantities of offensive and stinking filth, water, and substances, solid and liquid, to collect, stagnate, ferment, and be mixed together in and upon their said land aforesaid, and from said land to flow, descend, and be removed to and upon certain open and exposed places, upon, in, and near the same land and wharves, into and upon certain flats and land belonging to said inhabitants of said city of Boston ; and from said offensive and stinking substances, water, and filth, did cause, suffer, and permit divers noxious, offensive, deleterious, unwholesome, and unhealthy vapors, exhalations, and smells to arise, and then and there to contaminate, poison, and destroy the air and atmosphere, above, around, and near the same lands and flats, and in, and upon, and over said passage ways, highways, streets, and wharves, to wit, the passage ways and streets called Summer street, Sea street, and New Broad street, over which the good citizens of said Commonwealth, in great numbers, pass and repass every day, to wit, the number of three hundred passengers daily, and near which many citizens inhabit, live, and work ; to the great damage and injury of said passengers, and all other persons there being, residing, and passing, to the great hazard of their health, comfort, and lives, and to the common nuisance of all of said passengers, persons, and citizens, and of all the citizens of said Commonwealth there being, and against the law, peace, and dignity of said Commonwealth.

A true bill.

CHAS. E. COOK,
Foreman of the grand jury.
SAM'L D. PARKER,
Attorney of the Commonwealth.

December term, A. D. eighteen hundred and forty-eight: When said City of Boston, by their solicitor, Peleg W. Chandler, says, the City of Boston is not guilty.

This indictment was thereupon continued, from term to term, to the December term, A. D. eighteen hundred and forty-nine, when said City, by its attorney, Peleg W. Chandler, retract their plea and say, they will not contend with the Commonwealth.

This indictment was thereupon continued for judgment, from term to term, to the December term, A. D. 1849. And now it is considered by the court, that said City of Boston pay a fine of ten dollars, and stand committed until sentence be complied with.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

I, Thomas W. Phillips, clerk of the municipal court of the city of Boston, do hereby certify, that the foregoing is a true copy from the records of said municipal court remaining in my custody.

In testimony whereof I have hereunto set my hand and the seal of said municipal court, this 26th day of March, A. D. eighteen hundred and fifty-one. [SEAL.]

THOMAS W. PHILLIPS,
Clerk of said municipal court.

No. 14.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, to wit:

At the municipal court of the city of Boston, begun and holden at said Boston, within and for the county of Suffolk, on the first Monday of June, in the year of our Lord one thousand eight hundred and forty-nine: The jurors for the Commonwealth of Massachusetts on their oath present, that the inhabitants of the city of Boston, in their corporate capacity, being a municipal corporation, duly established by law of said Commonwealth of Boston aforesaid, in said county of Suffolk, on the first day of January, in the year of our Lord one thousand eight hundred and forty-nine, at Boston aforesaid, in said county, a certain common and public nuisance in and upon the land and tenement of the said inhabitants of said city, owned by them in their said corporate capacity, situated at the southerly part of said Boston, near to certain public passage ways, to wit, certain passage ways and highways there situate, severally called and known by the name of Summer street, Sea street, Broad street, (New Broad street,) and Purchase street, and near to several wharves, docks, tide-waters, and landings, and near to divers dwelling-houses, shops, store-rooms, and buildings there situate, did erect, cause, create, suffer, and maintain, by then and there causing and suffering great quantities of offensive and stinking filth, water and substances, solid and liquid, to collect, stagnate, ferment, and be mixed together in and upon their land and tenement aforesaid, and from said land and tenement to flow, descend, and be removed to and upon certain open and exposed places and docks upon, in, and near the same land and tenement, and to and upon certain public passage ways and highways near thereunto, to wit, certain passage ways, severally called and known by the name of Summer street, Sea street, Broad street, New Broad street, and Purchase street, and from said offensive and stinking substances, water and filth, did cause, suffer, and permit divers noxious, offensive, deleterious, unwholesome, and unhealthy vapors, exhalations, and smells to arise, and then and there to contaminate, poison, and destroy the air and atmosphere above, around, and near the same tenements and lands, and in and upon and over said passage ways and highways, to wit, the passage ways and highways called severally Purchase street, Summer street, Sea street, Broad street, and New Broad street, near to divers wharves, docks, landing-places, tide-waters, dwelling-houses, shops, stores, buildings, over which said tide-waters, streets, wharves, passage ways, and highways, the good citizens of said Commonwealth in great numbers pass

and repass every day, to wit, to the number of three hundred passengers daily, and near which many citizens inhabit, live, and work, to the great damage and injury of said passengers, and all other persons there being, residing, and passing, to the great hazard of their health, comfort, and lives, and to the common nuisance of all of said passengers, persons, citizens, and of all the citizens of said Commonwealth there being, and against the law, peace, and dignity of said Commonwealth.

A true bill.

THOS. GRAY,
Foreman of the grand jury.
SAM'L D. PARKER,
Attorney of the Commonwealth.

This indictment was found at the June term, A. D. 1849, when said City of Boston, by Peleg W. Chandler, city solicitor, says it will not contend with the Commonwealth; this indictment was thereupon continued from term to term until the December term, eighteen hundred and forty-nine. It is therefore considered by the court that said city of Boston pay a fine of ten dollars, and stand committed until sentence be complied with.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss.

I, Thomas W. Phillips, clerk of the municipal court of the city of Boston, do hereby certify, that the foregoing is a true copy from the records of said municipal court remaining in my custody.

In testimony whereof I have hereunto set my hand and the seal of said municipal court, this 26th day of March, A. D. eighteen hundred and fifty-one.

THOMAS W. PHILLIPS,
Clerk of said municipal court.

The defendant then produced the following witnesses, who, being duly cautioned and sworn, testified as follows, to wit:

Samuel Leeds. I have known the premises since 1808; was employed near them at the South wharf; Price wharf, Vose's or Bull wharf, was about 200 feet long. Price wharf was no wharf, but capsill run across; nothing between Bull and Fessenden's wharf, now Robins', some 200 or 300 feet off, except capsill; open space between Bull and Fessenden's wharves; no wharf at Price's; a pigstye at the end of it went down to capsill. This state of things continued as long as I knew it in 1810. Water came down Summer street into the head of the dock, and there was a dirt-catcher at the head of the dock—though water came to the dock. Don't know about it since; have seen the drain in 1808; nothing to obstruct vessels then; never knew town authorities to obstruct the passage. Dirt filled up the dock, and the dirt-catcher was put there by farmers for the manure. I suppose the dirt-catcher put there for the manure, to prevent the dirt from falling into the dock.

Wm. Goddard. Have known the premises for 62 years; Leeds' description pretty correct; the sewer was there when I was a child. It was 20 inches wide by 16 to 18 inches high, in my judgment. There was a square hole through the wall at the head of the dock, about the centre; also a dirt-catcher above. Seen the sewer discharged into the dock. Into the dirt-catcher the top drainage ran. The sewer ran into the dock below. I used to see the sewer go through into the dock. Never knew the dock obstructed before this.

There were fish-boxes at the head of the dock, 12 by 6 feet, and 5 feet high; they projected over the dock; never saw but one at a time. Don't recollect about engine-house; I used to occupy a place at the head of the dock, at the foot of Summer street, but little way from the head of the dock. Filled up since. I piled lumber at head of the dock; no lumber shipped there. Place was called town dock; vessels did not come up to the dock; Vose had vessels come up into the wharf and lay there, without obstruction. Never saw any one thing to hinder them.

Edmund P. Dolbear. Have known the premises about 14 years, between 1820 and 1835; I hired Price wharf; I was at that time a shipwright and caulker. Price's wharf's three foot front on the docks. There was a short piece down south; might be 80 feet long. There were groving ways, eastward of that on flats; but vessels could lay at it on dock. The under sewer came down to the beach; ran through about 20 inches in clear; never put a rule on it. Cesspool on top to catch water running in the streets. Great quantity of water run from the State-house. Heavy force of the water turned a hand-cart round, within 100 feet from capsill. The cesspool would not catch a 16th part of the water; it would tumble over it into the dock. On Bull wharf could wharf vessels on the north side of the wharf; not large vessels, because shoal water; not more than 100-ton vessels. Good part of it filled up. Never heard any one complain about the sewer or the top water; thought the city had a right to do it. I used to sail up and down the dock to haul in vessels. Used to call it—

Caleb J. Pratt. My business place is 100 feet from lower side of Sea street. Lived there since 1814. A sewer since that time has discharged into the dock.

In the fall of 1848 the sewer was very offensive, and at low water the east wind sent smell into the city; vessels turned blue. There was an indictment found against the city; was a witness against the city. Did not cure the evil, and in the summer of 1849 saw them build the sewer. There were two indictments against the city.

I never knew of the drain being dredged out; might have been dredged out; not a very difficult matter to do it; I don't know as this would abate it. Live within 100 feet of Lecraw; have no doubt the obstruction hurts Lecraw; amount of matter discharged there great.

Sam'l Capen. I do business 400 feet from the premises. Recollect condition of this in '48 and '49. Stench bad and dangerous to health; effect upon vessels inside as well as out; masters complained of it; have

known the premises since 1774. Sewer always discharged into it; not so bad before Price's wharf was built, as after it was built out; had a wider space to wash it out. Remember extension of drain in 1836, and filling up over it; it being extended 100 feet. Richardson I heard filled up over it.

Charles B. Wells. Reside in Boston; am superintendent of sewers and drains since 1837, when office was created. The enlargement of the drain next to the dock, 260 feet, took place before I came into office, say in 1836; found that part of it of same dimensions as at present; upper part enlarged in 1841 under my direction. My impression is that before the enlargement it was 14 inches wide and 16 inches high in the clear; I enlarged it to present dimensions as lower part; not large enough now. District drained by it is Summer street, Winter street, part of Washington street, north and south of Summer, 155 feet south, 215 feet on north, Bromfield street, part of Tremont street, north of Bromfield, say 150 feet, and south of Bromfield towards Winter, on Tremont, 336 feet, Park street, part of Mt. Vernon street; the fall water from Mt. Vernon street, the various lateral drains from courts running out of Summer street, Otis and Chauncey place, Hanley and Arch streets, Central court, part of it, part of Avon street. These parts *parts* have been drained since I held the office. No new drains laid; drains have been relaid; Broad street was carried out in 1838 and put into it; 425 feet has been added; no great number of houses in Broad street; the top water let into sewers within 10 years back; let into Summer street in 1842; taken in with contents under the sidewalks, with pits to catch the dirt; cleared out from time to time; and thence water running into main drain; mud pits to catch large amount of deposits, and then large mud pit below main drain to catch mud again running in water; drainage of Boston all to sea in docks, pile wharves or under bridges; dredging would not be a permanent relief, but temporary; the amount of discharge is so great is the reason. It was dredged or dug out after 1848, after first indictment. There are some docks do dredge out; large amount paid for dredging out Long wharf dock, in company with them; the city's part for 2 years before was $1,527.

The introduction of Cochituate water caused increased flowage of water and greater deposit in drain. The nuisance not created by order of the city in flushing out drain entirely; not large deposit in cross-drains. The first indictment was not after flushing drain; but second was after the order for flushing. It might be dredged out; would not cost 1,500 dollars a year; it was easy to clear it out; twice a year would do it, dipping it out. The agreement was that it should be put down under the wharf; many suggestions been made to carry it out; I can't say I understood it was; it would have been cheaper. Have been propositions made to have a street laid out by dock. City have a large property in South Boston; would have increased the value of it, having a street here, which would cost them nothing if the city owned the dock, to carry it out under the wharf. It would have injured the property by the deposit. I was aware I was doing him an injury;

I obeyed the orders given me. I am not aware of any private reason for putting it in; the reason of not going straight was a mistake; if it had gone thro' the centre of the dock, no vessel could come into the dock at all; no other place where the city have put such a drain; had a right to go down; there is reason of it; the deposit goes into the channel, and filling up Fore Point channel would be serious injury to Boston; I know nothing about filling up Fore Point channel from sewer.

I know of no dock owned by city, into which a drain is discharged. The city is no party to project about building an avenue to South Boston.

Solomon Piper. My place of business is on Sea street, next south of Emerson, dealer in wood, coal, &c., for 43 years; known the premises since 1808; remember sewer since 1808, and top water ran down and has fallen into the dock.

Engine house at head of dock, at the bottom of Summer street, over the dock; fish-boxes there also; recollection imperfect about it; live near Capt. Lecraw; pass the wharf twenty times a day; I did not suppose he did as much business as I do. I receive 800 cords of wood; from 750 to 800 cords per year. I would receive wood on my wharf and deliver it on his, including wharfage, for 25 to 30 cents per cord. I have carted it four times the distance and corded it up for 50 cents; hard coal I should think he would have 3000 tons, say 2 to 3000 tons a year. As they deliver up a cross stage, no more difficulty than on my wharf and others. Describes difficulty about coal vessels, same in others; frequently have to wheel distance 400 feet; would cost 12 to 15 cents more to cart it and not so much to wheel it.

I know Wiswall and the others; I know them to be men of good judgment. I don't believe buys 1,500 cords of wood; I judge from general impression of his business. It is not difficult to procure wharfage.

Shephard Robins. Reside in Boston; am a wood and coal dealer on Tileston wharf, two wharves from these premises; have occupied there upward of 20 years. Know Lecraw and his business; probably pass his wharf several times a day; amount of wood received by him annually is about 700 to 1000 cords, hard coal 2 to 3000 tons. Wood costs him on account of the obstruction 37½ cents per cord more; 12½ cents more in price, and expense of putting it on his wharf 25 cents, would cost 37½ cents. The hard coal. In 1850 transient labor $1.25 per day; labor 75 cents a day, less than it is now. In the buying and freighting of coal no difference; uniform rule as to price; is same below bridges; this would be carried below bridges; capt's then would merely inquire, whether below bridges. In 1850 it would make 5 cents a ton more, at present 8. Have heard captains say before and since, they would not haul into the dock.

I should have abandoned the wharf; I pay 2,100 dollars a year, for store and shed; I have street privilege on Broad street; wharfage would be 6 cents per ton; housing would be done 7 cts. a ton; 25 cents a ton; wheeling would cost 3 to 4 cents.

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Stephen P. Fuller, on behalf of the pl'ff, then testified as follows:

I appeared before the chairman of the committee of the mayor and aldermen in behalf of Thomas Richardson, and was authorized to make an arrangement to carry the drain under Lecraw's wharf. Mr. Rogers would not treat with Mr. Richardson at all. Mr. Rogers said he had no confidence that Mr. Richardson would carry out any agreement he made. I said I would guarantee that Richardson would carry an agreement; agrees to and verifies the plan in the case.

And here the defendant rested its defence, and the plaintiff rested its case, it being however added that the jury were taken to view the premises, at the motion of the defendant's counsel. The obstruction complained of, as it appeared by the evidence, was a drain composed of plank and timber, 460 feet long, eight feet wide, and eleven feet high to top of piles, and resting upon the surface of the mud in the dock, which extended from the head of the dock to within feet of the foot of the same, and at the end of said drain was seventeen feet from the plaintiff's wharf, on the north, and thirty-two feet from the other wharf, on the south.

The counsel for the defendant then prayed the court to instruct the jury as follows, to wit:

1. That by the law of Massachusetts, the town or city of Boston could not lay out under the statutes a highway between high and low water-mark, over their own lands or flats, or a dock or water way or slip for the use of the public, or of the inhabitants of said town or city.

2. That the mere evidence that the public or the inhabitants of Boston used said flats for the passage or dockage, as a town's dock, slip or way, as long as the town left said flats open to the sea, is no evidence of such dedication.

[The court, upon this second request, "charged no sufficient evidence to prove such dedication, without more."]

3. That the testimony of witnesses, that the said flats were called by them and others a public dock, is no evidence of such dedication.

[The court, upon this third request, charged, "that it is evidence of reputation, which may tend to prove such dedication."]

4. That the staking out of the highway in 1683 was no evidence of the dedication by the town of Boston of their flats as a public dock or way, for the passage of vessels over the same.

[The court charged, that this itself, without more, was no evidence of dedication, but might be considered and weighed by the jury, in connection with the other evidence.]

5. That the calling of said flats "town dock" at the end of Summer street, town way or town's slip in their deeds of adjoining flats or wharf, by the plaintiff's lessor, or his antecessors in the title in their deeds of adjoining lands, wharves or flats, is no evidence of such dedication; but is evidence that said dock, slip or way is the private property of the town and city of Boston.

6. That considering the rights of the owners of flats in the same, and the rights of the public in the same, as long as the owner leaves such flats open and unenclosed, under the law of Massachusetts, there

must be some plain and explicit declaration, by the owner of flats, that he doth dedicate the same to public use, as a public dock, quay or water way, in order that the jury should find that the same were thus dedicated, and that the use of the same for passage or laying of vessels is no evidence of claim of such flats as a public dock, quay or way by the public, and is no evidence of their acceptance of such dedication.

7. That if the jury are entitled legally to infer from the evidence submitted on the part of the plaintiff that said flats were dedicated to the public by the town or city of Boston, as a public dock, quay, slip or water way, they are also entitled legally to infer from the evidence submitted on the part of the defendant, that the same were dedicated by the city of Boston as a place upon and into which the common and public sewers of the town and city of Boston should be emptied, and the contents thereof discharged.

[The court so charged, upon this seventh request, "with this qualification, as accustomed to be used for drainage before 1836."]

8. That from such appropriation of said flats or docks by the town or city of Boston, to such sewerage or drainage, and the use of the same for such purpose, during nearly 140 years, the jury should more easily and properly presume that said flats or dock were dedicated to the use of sewerage and drainage, than from the fact that said flats or dock were left open or unenclosed, and were also used for passage and dockage of vessels; that the same were dedicated to the latter public use.

9. That if the jury find that said docks or flats were dedicated by the town or city of Boston, to both said public uses, and that the two cannot co-exist without increased outlay, then the latter must yield as the subject to the former, as the dominant public use.

10. That if the dominance of the public use of said flats or dock as a place of discharge for public drains and sewers is not evident from the nature and importance of the same to public health, from the position of Boston, and from the rights of Boston in said dock or flats, as owner of the soils in the same, and from the special appropriation of the same to such use, the jury may fairly infer such dominance from Robbins's petition in 1802, and Richardson's petition in 1836, and the filling up of a portion of said dock or flats upon such petitions, and the action and control of Boston over said dock or flats upon the said petition, and the extending of said drain and sewer through such filling up to the exclusion of passage and dockage of vessels over and in said flats or dock.

11. That if the jury find that said flats or dock were dedicated by the town and city of Boston, to the public use of a place of discharge for the public or common drains and sewers, then such use, from its nature, includes the right of the public to enlarge sewers, and an increased amount and altered kind of sewerage or drainage, according to the growth in population, and increased and altered wants of the inhabitants of Boston, as within the scope of such dedication; and the jury have a right also to infer this, from the fact that such enlargement, increase and alteration have been constantly going on since 1710, with the acquiescence of the plaintiff's antecessors in the title, and in 1802,

and in 1836, upon the request of the plaintiff's lessor and his antecessor in the title, Robins, to said wharf.

[The court so charged, upon this eleventh request, with this qualification, to wit: "If the jury find that the said flats or dock were dedicated for the use of drainage, as paramount to the right of navigation, and not otherwise."]

12. That dedication of said flats or dock to public use for passage and dockage, and for sewerage and drainage, are not legally inconsistent with a reserved right on the part of the city of Boston, as dedicator, to control said flats or dock for these and other public uses, applying said dock or flats to the one or the other, or to both or to all public uses, at the will and pleasure of the authorities of said town or city; and that the jury may fairly infer such reserved right of control, from the various acts of control exercised from time to time over said dock or flats by said town or city of Boston, and are found so to do in view of the fact that all dedication of said dock or flats is in this case to be inferred by them, from the acts and permission of the town and city of Boston. There being put in proof no express instrument of dedication indicating to what uses said flats or dock were dedicated, and what control was reserved over the same by the dedication.

13. That if the jury find that said dock or flats were dedicated by the town or city of Boston to the public uses of drainage and sewerage, as well as of passage and discharge of vessels, then the decree of the Board of Health of the said city of Boston, fairly made in remedy of an existing public nuisance in said dock or flats, extending said drain or sewer through said dock or flats to low water-mark, is conclusive evidence that the extension of said drain or sewer through said dock or flats, in conformity with said decree, is not a public nuisance, and the damage, if any, caused to the plaintiff thereby is damnum absque injuria.

14. That if the jury find that said dock, slip or way, was a public dock, slip or way, then that the right of the plaintiff to pass and repass through the same, with vessels, &c., and to lay vessels, &c., by the side of the wharf by him hired adjoining the same, was one of the public and not a private right, and that in such case his said right to use said dock, &c., was no greater than that of the public, in general, although greatly more beneficial to him in the exercise, and consequently that the decree of the board of health of said city of Boston, directing said drain or sewer to be extended, on the public property, through said dock, slip or way, to low water-mark, fairly made in remedy of an existing public nuisance and the extension of said drain or sewer, through said dock, slip or way, in conformity with said decree, is not the creation of a public nuisance in said dock, slip or way; and the continuance of said drain or sewer in said dock, slip or way, is not the continuance of a public nuisance, although the erection and continuance of said drain and sewer in said dock, slip or way, is not the continuance of a public nuisance, although the erection and continuance of said drain and sewer in said dock, slip or way, obstructs the public passage into said dock, slip or way; and the plaintiff, in passing therein to and from his said wharf, and in laying vessels at the side of

the next said dock, slip or way; that said decree is a complete protection to the said city and its officers, against all indictments and actions for the erection and continuance of said drain or sewer in said dock, slip or way, and that the damage to the pl'ff, if any, from the same is damnum absque injuria.

15. The city being the owner of the locus in fee, and the plaintiff claiming only an easement or right of way to and from the said wharf, bounded thereby, in right of the public, or as appurtenant to said wharf, if the jury find that the town of Boston, at a very early period of its history, laid it out as part of a public street or highway, and that a drain was established for more than a century, through and over it into the sea, conformably to the usage from time immemorial, of draining through streets into the sea; and said drain being now, and at the time of the alleged grievance, under the sole care, management and responsibility of the city government, the city had a right to use the locus, for all the usual purposes of a way or street, leading to the sea, for passing or draining, or either of them, in such manner as the public convenience required. And such use, if bona fide, and not wantonly injurious to the plaintiff, constituted no cause of complaint, although his private interest in the enjoyment of neighboring estates might be prejudiced thereby, it being damnum absque injuria, any right or benefits which he might otherwise have derived from the locus being subservient to such public uses and rights of use.

16. And such would be the legal effect, if the city, instead of owning the fee, had laid out the street or way at the time and in the manner appearing in the evidence, over land and flats belonging to some other person.

17. The laying out of a street or highway extending from upland to low water-mark over flats belonging to the city, did not vest in the owners of adjacent lands or wharves, or in any other persons, any rights not before existing, so long as the flats remained unfilled, they being subject to common use as navigable waters when covered by the sea; and any unlawful obstruction of this navigability constitutes, therefore, a public nuisance only, and is no ground for damages in a civil suit.

18. The laying out of said land and flats in continuation of a public street or highway did not vest in the owners of wharves or flats adjoining any right to bring or lay vessels by the side of their wharves or flats, for the purposes of loading or unloading said vessels, or to use the locus in any manner, so as to impede its use as a way to and from the sea to the other portion of the highway, of which it was a continuation. But if such laying out conferred upon the owners of adjacent wharves and flats any rights not before existing so long as the flats continued unfilled, it conferred only those of passing and repassing over them to such wharves and flats in such manner as not to impede or interfere with the navigability of the public.

19. If any wharves were in existence at the time when the locus was laid out as a part of Summer street, and any right was thereby conferred upon the owners of such wharves to bring or lay vessels upon it

for the purpose of being loaded or unloaded at said wharves, no such right exists to use the locus below such ancient wharves for wharves subsequently extended or erected.

20. That the laying out of the locus vested in the owners of the adjoining wharves or flats no right whatsoever to use it for any other purposes than as a passage way in boats or vessels so long as the flats should remain unfilled, to and from the other portions of Summer street, in common with all other citizens of the city or Commonwealth; and the plaintiff having no peculiar right, easement or privilege therein, has no claim for damages in a civil suit, for any obstruction thereof.

21. That the drain into, upon and over these flats to the sea, having been established by lawful authority, the city government had the right so to construct and maintain it as to accomplish the purposes for which it was made; and if it had become necessary to erect this structure, in order to carry the accumulated matter caused by an increased population into deep water, they had the legal right so to do, and such proceeding, if prejudicial to the interest or use which any individual may have before enjoyed in said dock, affords no ground of action, but is damnum absque injuria, and the judgment and decree of the mayor and alderman, not being impeached, is conclusive of the necessity of said structure.

22. That if the emptying of this common sewer upon the flats, in conformity to the legal rights of maintaining one there, had become a nuisance, dangerous to the health and lives of the inhabitants of the city, and if this structure was the only reasonably practicable means of abating such nuisance, and was erected by the city government in the exercise of an honest discretion, the plaintiff has no cause of action.

23. That if the jury find that the town have laid out the locus as part of a street or highway, and never having discontinued it, and have always claimed and exercised the right of draining through and over it, without question or denial of such right, and filled up, or consented to the filling up of portions, as public convenience required; the town had the right at all times to fill up the residue, with earth or wood or otherwise, and to convert it into a street for traveling over with horses and carriages, and has that right now; which right is obviously inconsistent with the right claimed by the plaintiff, and upon the allegation of which this suit is brought, of using the locus as a dock, to lay vessels in by the sides of his wharf; and that the plaintiff, therefore, has no ground of complaint, because the defendants, by a partial exercise of their right to use the locus for a street, and draining through it, has, in some degree, impeded any use he may have heretofore, premissively or otherwise, made of these flats.

24. If the jury find that the city have dedicated or laid out the locus as part of a public way or street, no person can claim any greater right, privilege or easement therein or thereupon, than arises from the dedication or laying out of land as a street or highway; and that the use of flats as a dock for laying vessels upon not being one of the purposes for which streets or highways are or can be laid out or dedicated, the pl'ff

is not entitled to recover the alleged grievances set forth in his declaration.

25. That the town of Boston had no lawful authority to lay out the locus as a highway or street, so as to vest in the owners of adjacent wharves or flats the right to use it as a dock or slip, to lay vessels in by the side of such wharves or flats for the purpose of loading and unloading the same; and therefore if the city did not own the fee of the locus, such laying out of it as a street or highway could not confer any such right upon such owners; and if the city did own the fee, nevertheless, as the dedication of the flats to the public use was merely and exclusively as a street or highway, no other rights of use were created by such dedication than pertained to streets and highways laid out over lands of other persons, and so quacunque via, *the* viz: the plaintiff is not entitled to recover.

26. That the damages recovered must be the damages proved, and not those which the plaintiff has left upon estimate and conjecture, when he might have proved by his books of account, verified by his clerk, or by his bills of lading, or by showing orders, especially as to coals, given and received, and accounts of sales, or invoices of coal, verified by oath.

[The court refused so to rule under the circumstances of the case, the books not having been called for, and not being evidence, without consent of the defendant.]

27. That when the plaintiff leaves the amount of his damages to be estimated and conjectured, when this might be proved, the lowest estimate of his witnesses to be taken against him.

[The court refused so to charge, under the above circumstances.]

28. That the plaintiffs, after such damage was done by the defendant's drain to his wharf, as to render it a place in which his business, as a wood and coal dealer, could not be carried on as formerly, by receiving wood and coal, or either, directly at his wharf, as profitably as by using some other wharf—as the place of delivery upon purchase, and by carting the same from such wharf to his own as a place of stowage and sale, he cannot take the more unprofitable mode of carrying on his business, and claim the consequence of such misjudgment or wilfulness in damages from the defendant.

[The court so rules, with qualifications and explanations.]

29. That the plaintiff, on all the evidence in the case, is not entitled to recover damages.

But the honorable court did refuse then and there to give all of said instructions to the jury, in the terms and manner prayed for, or any of the same, except as qualified as aforesaid, but did charge the jury upon the request of the defendants, as follows, to wit:

First. That the plaintiff in said action cannot recover against the defendant, under those counts of his declaration in which he sets out a right of passage for vessels, &c., in the locus, to the wharf by him hired from the channel of the sea, and from the channel of the sea to said wharf, and of laying vessels in the locus at his said wharf, as ap-

purtenant to said wharf, without proof of such private right therein by grant or prescription, or by estoppel, or implied covenant, operating by way of estoppel.

Second. That the grant of the town of Boston to Gridley not being shown by the plaintiff to have been made after the year 1647, and the burthen of proving his private right in the locus being upon the plaintiff, then as matter of law the grant to said Gridley, the antecessor in the title of the plaintiff's lessor in said wharf, is not shown to extend beyond high water-mark, though it bounds said Gridley "eastward on the sea," and bound on the south by a street or lane; and said grant raises therefore no implied covenant that a street or lane, or more especially that a water way for vessels and a place of dockage for the same, extends eastward along the southerly side of the granted premises, beyond high water-mark, as the same was at the time of said grant.

Third. That the subsequent licenses by the selectmen of Boston to the proprietor of the premises, included in said grant to wharf in front of their own land, in proportion to other men, or to wharf forty feet in width, raise no implied covenant on the part of the town of Boston, that the town would keep open their own flats on the south side of said wharf, for the purpose of passing with vessels from said side of said wharf to the channel, and from the channel to said side of said wharf, and of laying vessels at said side of said wharf.

Fourth. That the making and extension of said wharf, under said licenses by the proprietors thereof over their own flats, is no evidence of claim on the part of said proprietors of a right to use the flats of the town of Boston, lying on the south side of said wharf, for the purpose of such passage or dockage, as a right appurtenant to said wharf.

Fifth. That the proof submitted to the jury, to wit: that the owners of said wharf have from time to time used said flats for the purpose of such passage and dockage, without more, is no evidence of a grant of the right of passage and dockage, as appurtenant to said wharf from prescriptive uses, because as long as said flats were allowed by said city of Boston to remain open and unenclosed, the evidence aforesaid lacks the essential characteristic of use, under claim of right to use said flats for passage and dockage, as appurtenant to said wharf, and is not evidence of an use adverse to the rights of the town or city of Boston as owner of said flats.

Sixth. That the various deeds submitted to the jury under which the plaintiff's lessor and his antecessor in the title to said wharf held and claimed the same, and which bounded them on the "town's dock," "the town's way" or "the town's slip," are strong, and, if not overcome by other proof of adverse claim, conclusive proof that *that* any use of said flats for passage or dockage, which the plaintiff's lessor and his antecessors in the title might have enjoyed, was enjoyed by permission of the town or city of Boston, or because the same was a public dock or way, and not adversely to the town or city of Boston, or to the public; and that no length of user under such circumstances could confer upon the owner of said wharf a right of passage over, or dockage upon, said flats as appurtenant to said wharf.

Eighth. That if the public or inhabitants of Boston had or have any rights in said piece of flats as a public dock or way, irrevocable by the town or city of Boston, as owner of the said flats, they could derive such rights only from a dedication of said flats to the public use by the town or city of Boston, as owner of the same.

Ninth. That the use of said flats or dock since 1710, as a place upon and into which the common and public sewers of the town and city of Boston were emptied, and the contents thereof discharged, was, under the laws of Massachusetts, as well before said town or city of Boston took the drains and sewers under their sole charge as after, a public use of said flats or dock to which the same might be dedicated by the owner of the soil.

Tenth. That if the jury find that said flats and dock were dedicated to the public use as a place of discharge of a common drain or sewer of the town and city of Boston, and especially if they find that the town or city of Boston have reserved a right to control said dock or flats, for this, as well as other public uses, at their will and pleasure, then the construction of said culvert in and upon said dock or flats, to the exclusion of passage to and from said wharf and of dockage at the same, is not a public nuisance if fairly done to remedy a public nuisance caused by the increase and altered discharge of said drain or sewer into said dock or flats, but the exercise of a right on the part of the authorities of said city; and the damage to the plaintiff, if any therefrom, *if any*, is damnum absque injuria.

Eleventh. That if the owners of the wharves and flats adjoining the locus had any peculiar rights or interests in it, as a portion of the street or highway, they had none which could interfere with the right of the public to use it as an unobstructed and free way from the sea to the other portion of Summer street, and therefore are not entitled to damages for being hindered or prevented in using it in a manner that

The counsel for the plaintiff then prayed the court to instruct the jury as follows, to wit:

1. That if the jury find that said dock, slip or way was a public dock which all the public had a right to use as a public dock, then that the right of the plaintiff to pass and repass through the same with vessels, and to lay vessels by the side of the wharf by him hired adjoining the same, *to as* one of the public, and not a private right, and in such case his right to use said dock was no greater than that of the public in general, although greatly more beneficial to him in the exercise of it; that the board of health had a right to construct a drain through the dock, but if in so doing they created a structure from one end of a public dock to the other, in such manner as to become in the opinion of the jury, a public nuisance, and to destroy the use of said dock, and if by so doing the plaintiff's access to the sea from his wharf was wholly cut off, and he thereby suffered peculiar and special damages not common to, and much greater than the public in general suffered, then the plaintiff would be entitled to recover the damages which he suffered by the wrong aforesaid.

2. That plaintiff is entitled to recover the damages actually sustained by him, not remote, speculative, or theoretical damages, but the amount actually proved by him to have been directly occasioned by the nuisance in question, and the jury must, from all the evidence in the case, settle the fair indemnity to him.

The honorable court did then and there give said instructions to the jury, and did further charge them as follows, to wit:

"That this was not a case in which a jury should give anything like vindictive damages; if any malice was exercised in the passage of the orders of the board of health, or in the execution of those orders by the officers of the city, they were individually liable to parties injured, and the city as a corporation was not liable for such malicious acts.

"By the constitution of Massachusetts compensation was guarantied for private property taken for public uses; the jury should only give a fair compensation to the plaintiff; in estimating what such compensation would be, the jury have a right to look to the immediate, consequential and not remote damages to the plaintiff to guide them.

"The defendant cannot now call on the plaintiff to produce his books, as no notice was given to him to produce them, they not being competent evidence without the consent of the plaintiff; that the testimony offered by the plaintiff is competent, and that on this testimony the jury have a right to assess damages; although the estimates of the plaintiff's witnesses differed, the jury were not obliged by the character of the testimony to take the lowest estimate, but must judge of the various estimates according to their views of the testimony.

"The city are not responsible for the plaintiff's carrying on his business in a rash, imprudent manner after the obstruction. The plaintiff was not obliged to give up his wharf; he had buildings there. The defendants put him in the difficulty, and they have compelled him to exercise his judgment, and can hold him answerable only for reasonable discretion and judgment; the plaintiff was only obliged to act as a man of reasonable discretion would act, about leaving his wharf and carrying on his business elsewhere; if he acted imprudently, deduction is to be made from his damages in that account."

Whereupon the counsel for the defendant did then and there except to the aforesaid refusals and the instructions and charge of the honorable court; and thereupon the jury returned a verdict for the plaintiff, in words and figures following, to wit:

"The jury find that the said defendants are guilty in manner and form as the plaintiff hath alleged in the sixth and seventh counts in his declaration, and they assess the damages in the sum of nine thousand two hundred and eighty dollars, of which sum thirteen hundred and twenty-five dollars are assessed as the damages for injury alleged in the sixth count, and seven thousand nine hundred and fifty-five dollars are assessed as the damages for injury alleged in the seventh count.

WILLIAM PINNIGER,
Foreman."

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And inasmuch as the matters referred to, and the several instructions of the honorable court so objected to, do not appear by the record of the verdict aforesaid, the counsel on the part of said defendant prayed the honorable court to set their seal to this bill of exceptions, containing the several matters proved and given in evidence, the charge of his honor the judge thereupon, and the exceptions thereto.

All which being found to be true, in witness thereof I have hereunto set my hand and seal.

JOHN PITMAN, [SEAL.]
District judge, U. S., Rhode Island district.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judge of the circuit court of the United States, holden in and for the Rhode Island district, greeting: [SEAL.]

Because, that in the record and process, and also in the recording of judgment in a suit before you, or some of you, between David R. Lecraw, of Nashville, in the State of New Hampshire, a citizen of the State of New Hampshire, plaintiff, and the city of Boston, a corporation established by law in the district of Massachusetts, defendant in a plea of trespass on the case, a manifest error has intervened to the great damage of the said defendant, as has in his complaint been stated:

And it is just and proper that the error, of any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf:

You are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Hon. Roger B. Taney, our chief justice of the said Supreme Court, this eighth day of August, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-eighth.

August 8, 1853, allowed. JOHN T. PITMAN, *Clerk*.

Bond having been filed.

JOHN PITMAN,
District judge U. S., Rhode Island district.

RHODE ISLAND DISTRICT, *sc.*

The President of the United States of America, to the marshal of said district or to his deputy, greeting: [SEAL.]

You are hereby required to make known to David R. Lecraw, of